No. 25-1

In the Supreme Court of the United States

JAMES SKINNER
PETITIONER,

v.

LOUISIANA,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO LOUISIANA'S 21ST JUDICIAL DISTRICT COURT

BRIEF OF LAW PROFESSORS AS AMICI CURIAE SUPPORTING PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici are fourteen law professors whose research and teaching focus on legal ethics and professional responsibility. They have collectively authored widely cited scholarship on prosecutorial conduct. Many have lectured extensively on the subject.

Amici share an interest in ensuring the ethical standards governing prosecutorial conduct are well-defined and consistently upheld. Because courts' *Brady* decisions and legal communities' ethical standards frequently overlap and reinforce each other, unremedied *Brady* violations weaken existing ethical standards and promote harmful professional norms. Accordingly, *amici* submit this brief to highlight, from a legal ethics perspective, why this Court's intervention is imperative.

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[1] *Amici* affirm that no part of this brief was authored by any party's counsel, and no person or entity other than *amici* or their counsel funded its preparation or submission. *Amici* also affirm that all parties were timely notified of the filing of this brief.

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SUMMARY OF ARGUMENT

The State of Louisiana deprived Mr. Skinner of his right to due process by withholding substantial exculpatory evidence critical to his defense. The Louisiana courts then refused to grant relief, even though this Court granted relief to Mr. Skinner's co-defendant under nearly identical circumstances in *Wearry v. Cain*, 577 U.S. 385 (2016) (per curiam). This outcome is "incompatible with 'rudimentary demands of justice.'" *Giglio v. United States*, 405 U.S. 150, 153 (1972) (citation omitted). It is problematic for another distinct but related reason: It damages the ethical standards upon which the justice system relies.

1. Prosecutors occupy a uniquely powerful position in the criminal justice system. With this extraordinary power comes an extraordinary ethical responsibility: Prosecutors must seek justice within the bounds of the law, not merely to convict.

In *Brady v. Maryland*, 373 U.S. 83 (1963), this Court recognized the constitutional dimension of that ethical responsibility: Prosecutors must disclose all "evidence favorable to an accused" that is "material either to guilt or punishment." *Id.* at 87. *Brady* shaped not only constitutional law but also professional ethical standards. Where the Canons of Professional Ethics had previously offered only vague admonitions against "suppression of facts . . . capable of establishing the innocence of the accused," *Brady* prompted the legal community to adopt clear rules imposing an affirmative disclosure duty.

Today, every state has imposed a *Brady*-like ethical disclosure rule on prosecutors. Some states have expanded *Brady*'s protection, imposing a greater disclosure obligation on prosecutors than the Constitution demands.

But many, including Louisiana, set their rules to be co-extensive with *Brady*. Together, these rules create personal peril for prosecutors who deprive defendants of due process; they ensure that prosecutors fulfill their duty owed not just to the accused but also to the public.

2. Because constitutional obligations and ethical standards go hand in hand, when courts leave *Brady* violations undisturbed, they send mixed messages to prosecutors about their ethical duties. These mixed messages erode professional norms. The weakened norms, in turn, lead courts to become even more tolerant of constitutional violations.

Such systemic failings have grave consequences. Defendants rely on prosecutors to produce evidence necessary for their defense, as prosecutors have exclusive access to and control over certain evidence. When deprived of important information, defendants fall victim to wrongful convictions. Indeed, the most prevalent form of prosecutorial misconduct in wrongful conviction cases involves the suppression of exculpatory evidence.

3. The *Brady* violations in this case are particularly egregious. Louisiana prosecutors withheld not just one, but at least half a dozen, pieces of favorable evidence from Mr. Skinner. Notably, this included much of the same withheld evidence that led this Court to reverse Mr. Wearry's conviction. The repeated suppression of favorable evidence here rendered an already weak case even less reliable. Indeed, Mr. Skinner's conviction was possible only after a hung jury in the first trial and then a non-unanimous verdict in the second.

4. Moreover, the state-court decisions below doubly flouted this Court's *Brady* jurisprudence.

For starters, they brushed aside *Wearry* as "distinguishable" without *any* explanation. But Mr. Wearry's case and Mr. Skinner's case are virtually identical: Mr. Skinner and Mr. Wearry were charged by the same district attorney, indicted by the same grand jury, and tried as co-defendants for the same homicide, based on the same theory, with testimony from the same witnesses. Critically, prosecutors built both cases on the testimony of Sam Scott and Eric Brown while presenting no physical evidence. And, in both trials, evidence that would have seriously undercut Scott and Brown's testimony was buried. In *Wearry*, this Court found that "[b]eyond doubt, the newly revealed evidence suffices to undermine confidence in Wearry's conviction." Here, *the very same impeachment evidence is at issue*. To reject Mr. Skinner's claim while granting Mr. Wearry's claim would offend the most basic tenets of justice.

Worse yet, while denying Mr. Skinner relief, the district court faulted Mr. Skinner for not presenting information proving that the withheld evidence is "credib[le]." This requirement to prove "credibility" is wholly unsupported by this Court's precedents. It shifts to the court a role that belongs to the jury at a new trial. It defies basic logic. And it renders relief under *Brady* all but unattainable for most defendants.

The Court should grant review or summarily reverse.

ARGUMENT

I. Prosecutors Have Both a Constitutional and an Ethical Obligation to Disclose Material Evidence to the Defense

The prosecutor "has more control over life, liberty, and reputation than any other person in America." Robert H. Jackson, Att'y Gen. of the U.S., The Federal Prosecutor: Address to the Second Annual Conference of United States Attorneys (Apr. 1, 1940). With such tremendous power comes a tremendous ethical responsibility: A prosecutor must "seek justice within the bounds of the law, not merely to convict." ABA Criminal Justice Standards for the Prosecution Function § 3-1.2(b) (4th ed. 2017).[3]

To ensure that "administration of justice," this Court held in *Brady v. Maryland*, 373 U.S. 83 (1963), that prosecutors have an affirmative obligation to disclose "evidence favorable to an accused" where "the evidence is material either to guilt or punishment." *Id.* at 87. This *Brady* obligation, as the Court later explained, is "applicable even though there has been no request by the accused." *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (cit-

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[3] *See also, e.g.*, Model Rules of Pro. Conduct r. 3.8 cmt. [1] (Am. Bar Ass'n 2020) ("A prosecutor has the responsibility of a minister of justice and not simply that of an advocate."); Fred C. Zacharias, *Structuring the Ethics of Prosecutorial Trial Practice: Can Prosecutors Do Justice?*, 44 Vand. L. Rev. 45, 46 (1991) (explaining that "Codes of professional responsibility" treat prosecutors as "ministers having an ethical duty to do justice"); *People v. Davis*, 18 N.W. 362, 363 (Mich. 1884) (describing the prosecutor as "a sworn minister of justice, whose duty it was, while endeavoring to bring the guilty to punishment, to take care that the innocent should be protected"); *Hurd v. People*, 25 Mich. 405, 416 (1872) (explaining that "[t]he prosecuting officer represents the public interest, which can never be promoted by the conviction of the innocent").

ing *United States v. Agurs*, 427 U.S. 97, 96 (1976)). It encompasses "evidence known only to police investigators and not to the prosecutor." *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). And it "encompasses impeachment evidence" that calls into question the "reliability of [the government's] witness[es]." *Strickler*, 527 U.S. at 280; *Giglio*, 405 U.S. at 154.

With its decision in *Brady*, this Court shaped not only constitutional law but also professional ethical standards. Before *Brady*, the ethics community had only "vague[ly]" admonished that the "suppression of facts . . . capable of establishing the innocence of the accused is highly reprehensible." Canons of Pro. Ethics 5 (Am. Bar Ass'n 1908); Addison M. Bowman, *Standards of Conduct for Prosecution and Defense Personnel: An Attorney's Viewpoint*, 5 Am. Crim. L.Q. 28, 28 (1966). *Brady* changed that, for the first time providing a clear framework to assess prosecutors' ethical obligations. Just one year after the Court's 1963 decision, the American Bar Association (ABA) created the Special Committee on the Evaluation of Ethical Standards to amend its existing set of ethics rules. *See* Stephen Gillers & Roy D. Simon, Regulation of Lawyers: Statutes and Standards 523 (2005). And in 1969, the Committee submitted, and the ABA adopted, the following disciplinary rule specifically aimed at prosecutors:

> A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

Disciplinary R. 7-103 (Am. Bar Ass'n 1969); *see also* Peter

A. Joy, *The Relationship Between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies for a Broken System*, 2006 Wis. L. Rev. 399, 412 (2006).[4]

Today, *every* state (and the District of Columbia) has adopted an ethics rule to impose on prosecutors a *Brady*-like disclosure obligation. *See infra* Appendix A. Some jurisdictions have broadened prosecutors' ethical obligation to reach beyond *Brady*. *See* Deborah L. Rhode, David Luban, Scott L. Cummings, Nora Freeman Engstrom & Benjamin H. Barton, Legal Ethics 483-84 (9th ed. 2024). But many, including Louisiana, have made prosecutors' disclosure obligations "coextensive with the obligations required by *Brady*." *In re Seastrunk*, 236 So. 3d 509, 519 (La. 2017); *see also, e.g., State ex rel. Okla. Bar Ass'n v. Ward*, 353 P.3d 509, 521 (Okla. 2015); *In re Riek*, 834 N.W.2d 384, 391 (Wis. 2013) (per curiam); *Disciplinary Couns. v. Kellogg-Martin*, 923 N.E.2d 125, 130 (Ohio 2010) (per curiam); *In re Att'y C*, 47 P.3d 1167, 1171 (Colo. 2002) (en banc).

These ethical rules reflect and reinforce *Brady* by creating personal peril for prosecutors who deprive defendants of due process. While *Brady* generally "deal[s] with the *defendant's* right to a fair trial," ethics rules speak to the *prosecutor's* "character and fitness." *United States v.*

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[4] Disciplinary Rule 7-103 has since been modified and incorporated into the ABA's Model Rules of Professional Conduct. The rule currently reads:

> The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Model Rules of Pro. Conduct r. 3.8(b) (Am. Bar Ass'n 2020).

Agurs, 427 U.S. 97, 107 (1976) (emphasis added); *Connick v. Thompson*, 563 U.S. 51, 66 (2011). As the Louisiana Supreme Court has explained, these rules "exist[] to ensure that the integrity of the prosecutorial arm of our criminal justice system is maintained." *In re Jordan*, 913 So. 2d 775, 783 (La. 2005). Prosecutors who violate the rules violate their "duty owed" not just to the accused but "to the public." *Id.*

The point of all this is simple: As a "minister of justice," the prosecutor must fulfill "specific obligations to see that the defendant is accorded procedural justice." Model Rules of Pro. Conduct r. 3.8 cmt. [1] (Am. Bar Ass'n 2020). And by now, it is legal ethics 101 that a prosecutor bears an "affirmative duty to disclose evidence" that is "material to [the defendant's] guilt." *Kyles*, 514 U.S. at 432; *Cone v. Bell*, 556 U.S. 449, 469 (2009); *see also* ABA Criminal Justice Standards for the Prosecution Function § 3-5.4 (4th ed. 2017).

II. Unremedied *Brady* Violations Corrode Professional Ethical Standards and Harm the Justice System

Because *Brady* obligations and professional ethical standards often go hand in hand, *see supra* p.9, how courts adjudicate *Brady* claims affects how the legal community defines its ethical standards. As a result, when courts tolerate *Brady* violations, they send confusing and subversive signals to prosecutors.

Consider this case. The decisions below, while rejecting Mr. Skinner's *Brady* claim, simultaneously defined the contours of Rule 3.8(d) of the Louisiana Rules of Professional Conduct. Indeed, "[t]he disclosure obligations found in Rule 3.8(d)" and "in *Brady*" are "coextensive" in Louisiana. *In re Seastrunk*, 236 So. 3d at 519; *see also supra* p.9. Louisiana prosecutors may, based on the deci-

sions below, wrongly assume that withholding exculpatory and impeachment evidence like that in Mr. Skinner's case is tolerable.

This vicious cycle then feeds itself. Professional ethical standards follow court opinions, but courts also look back to "accepted norms of professional conduct" when defining constitutional obligations. *Nix v. Whiteside*, 475 U.S. 157, 171 (1986); *see also Strickland v. Washington*, 466 U.S. 668, 688 (1984) (professional norms "are guides to determining what is reasonable").

The resulting harm strikes at the heart of the justice system. Defendants rely on prosecutors to assemble information necessary for their defense, as they lack the investigative resources available only to the State—for example, the ability to direct law enforcement resources, to search people and places, and to interrogate witnesses. *See* Richard A. Rosen, *Disciplinary Sanctions Against Prosecutors for* Brady *Violations: A Paper Tiger*, 65 N.C. L. Rev. 693, 694 (1987); *see also Wardius v. Oregon*, 412 U.S. 470, 475 n.9 (1973) (discussing prosecutors' "inherent information-gathering advantages"). Weakened disclosure standards—whether ethical or constitutional—deprive defendants of that important information, thereby undermining the accuracy and fairness of trials. As Justice Brennan put it, the "least" defense counsel deserves is "the opportunity to do what the state does when the trail is fresh," namely, to access "what the state has learned." William J. Brennan, *The Criminal Prosecution: Sporting Event or Quest for Truth?*, 1963 Wash. U. L.Q. 279, 286 (1963); *see also* David Luban, *Are Criminal Defenders Different?*, 94 Mich. L. Rev. 1729, 1737 (1996) (describing "the ideal of adversary balance").

Even worse: The deprivation of exculpatory information readily leads to wrongful convictions. The National Registry of Exonerations found that 44% of all exonerations involved withholding exculpatory evidence, the most prevalent form of prosecutorial misconduct. *See* Samuel R. Gross et al., Nat'l Registry of Exonerations, *Government Misconduct and Convicting the Innocent* iv, 81 (2020), https://tinyurl.com/p76rh4ju. Many of these exonerations involved defendants on death row. *Id.* at 1-2, 4 & n.7. This Court is no stranger to such injustice: Time and again, *Brady* litigants who succeeded before the Court were acquitted or had their charges dismissed on retrial. *See, e.g.*, *Connick v. Thompson*, 563 U.S. 51, 54 (2011); *Kyles*, 514 U.S. at 422.

III. The Brady Violations Here Are Particularly Egregious

Exacerbating the inequity, the *Brady* violations in this case are flagrant. Louisiana prosecutors concealed at least half a dozen pieces of favorable evidence from Mr. Skinner—including *much of the same exculpatory evidence* they concealed in the Wearry trial. *See* Pet.7-9. And it was the failure to divulge this exculpatory evidence in the Wearry trial that led this Court to reverse Mr. Wearry's conviction because the "State's trial evidence" was nothing more than a "house of cards built on the jury crediting [Sam] Scott's account." *Wearry v. Cain*, 577 U.S. 385, 392 (2016) (per curiam). Specifically, as in *Wearry*, the prosecutors concealed:

- Reports from a prisoner that Sam Scott—the State's key witness in both the Wearry and

Skinner trials—told the prisoner to falsely accuse people if he wanted to "get out of jail." Pet.App.27a.[5]

- Details of Louisiana's plea offer to Scott, which allowed Scott to plead to manslaughter and receive credit for time served *from before the crime occurred*, ensuring Scott's release shortly after testifying. Pet.App.31a-32a; Pet. for Writ of Cert. at 6, *Wearry*, 577 U.S. 385 (No. 14-10008).
- Medical records concerning Randy Hutchinson—an alleged co-defendant—that made Scott's account of events physically impossible. Namely, Scott testified that Hutchinson "r[a]n into the street to flag down the victim, pulled the victim out of his car, shoved him into the cargo space, and crawled into the cargo space himself." *Wearry*, 577 U.S. at 390. But that couldn't be. Hutchinson was incapacitated following knee surgery. *See id.* He could barely walk, much less run—and he certainly could not have performed the physical feats that Scott described. *See id.*; *see also* Pet. for Writ of Cert. at 11, *Wearry*, 577 U.S. 385 (No. 14-10008).
- Records showing that police had promised Eric Brown—another witness who testified against both Mr. Wearry and Mr. Skinner—

[5] It bears emphasis: Sam Scott was the State's star witness in both trials, and, upon its careful review of the record from the Wearry trial, this Court concluded that Scott's testimony in the Wearry trial was "dubious." *Wearry*, 577 U.S. at 393.

> that they would "talk to the D.A." about a fifteen-year sentence that Brown was serving and five additional charges that Brown was facing. *Wearry*, 577 U.S. at 390.

See also Pet.7-9. Still other exculpatory information has only recently surfaced:

- Police records showing that both Sam Scott and Eric Brown told shifting and conflicting stories to the State and were subsequently "corrected" by the State. *See* Pet.App.19a-25a, 36a, 43a-45a, 79a-81a.
- Government records showing that Brown had moved for—and later received—a favorable sentence reconsideration while testifying, which reduced a fifteen-year sentence he was serving to just probation. *See* Pet.App.56a-57a.
- Reports from prisoners that Brown told them they could "get out of jail" by providing information about the crime, and that Brown was involved in the crime but wanted to "pin this crime" on someone else. Pet.App.27a, 50a.

See also Pet.12-14. "[C]ases in which the record reveals so many instances of the state's failure to disclose" are "extremely rare." *Kyles*, 514 U.S. at 455 (Stevens, J., concurring). And these repeated instances of *Brady* violations made the State's already weak case even less reliable—so much so that it took one hung jury followed by a separate non-unanimous jury to convict Mr. Skinner. *See* Pet.App.24. This Court's intervention is paramount.[6]

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[6] The non-unanimous nature of Mr. Skinner's conviction further taints this case. Louisiana adopted non-unanimous convictions "to

IV. The Decisions Below Grossly Distorted *Brady* by Distinguishing Two Cases that Aren't Distinguishable and Imposing on Mr. Skinner an Unprecedented Burden to Prove the "Credibility" of the Evidence that Prosecutors Withheld

As the petition explains, *Wearry v. Cain*, 577 U.S. 385 (2016) (per curiam), resolves this case. *See* Pet.18-27. Mr. Wearry was Mr. Skinner's co-defendant; the two together allegedly killed a driver and disposed of his body. *See* Pet.4. Like Mr. Wearry, Mr. Skinner was charged with murder. *See* Pet.3. Like Mr. Wearry, Mr. Skinner faced a trial with no physical evidence linking him to the crime. Pet.5-6. And like Mr. Wearry, Mr. Skinner was convicted almost entirely on the testimony of Sam Scott and Eric Brown. *See* Pet.5-6. When this Court ruled that prosecutors had violated Mr. Wearry's rights under the Fifth and Fourteenth Amendments by withholding key impeachment evidence undercutting Scott and Brown's testimony, that finding logically meant that Mr. Skinner's rights were violated, too.

Yet, the Louisiana courts stubbornly disagreed. Although Mr. Skinner repeatedly argued that *Wearry* dictates the outcome of his case, the district court rejected that argument, merely asserting that "the *Weary* [sic] case is distinguishable enough" that "its decision did not compel the Court to follow suit." Pet.App.3a. The appellate courts then denied review. *See* Pet.App.5a, 7a. The

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ensure that African-American juror service would be meaningless." *Ramos v. Louisiana*, 590 U.S. 83, 88 (2020); *see also* Constitutional Convention of the State of Louisiana, Official Journal of the Proceedings of the Constitutional Convention of the State of Louisiana 380-81 (H.J. Hearsey ed., 1898) (convention that adopted non-unanimous convictions had the express purpose to "assur[e] white political supremacy"). The jury that convicted Mr. Skinner included only one Black juror. *See* Pet.6.

district court's bald statement is indefensible. "There is no legitimate basis to treat the two codefendants differently." Pet.App.8a (Griffin, J., dissenting).

But the district court compounded its error with a second, equally flawed rationale. The court rejected Mr. Skinner's *Brady* claim because Mr. Skinner "failed to present any evidence as to the credibility of [the] statements" that he believed constituted *Brady* materials. Pet.App.3a. The court did not explain which "statements" it was referring to, only that the "statements" were "made by multiple parties over two decades ago." Pet.App.2a-3a.

With this declaration, it appears that the court inexplicably imposed a burden on Mr. Skinner to prove that statements made by Scott, Brown, and/or their acquaintances in prison were "credible" enough such that introducing them to the jury would "undermine confidence in the outcome of the trial." Pet.App.3a. And it somehow imposed this unprecedented burden on Mr. Skinner in the shadow of this Court's determination that "[b]eyond doubt, the newly revealed evidence suffices to undermine confidence in Wearry's conviction." *Wearry*, 577 U.S. at 392.

The district court's ruling is inexplicable. "Credibility" has never been an element of a *Brady* violation. To the contrary, at this juncture, the reviewing court must reverse if it determines that there is a "reasonable likelihood that [the withheld evidence] *could* have"—not *would* have—"affected the judgment of the jury." *Wearry*, 577 U.S. at 392 (emphasis added). Reversal is warranted "[e]ven if the jury—armed with all of th[e] new evidence"—might not find the evidence credible and might still "vote[] to convict." *Id.* at 394.

Indeed, whether any suppressed evidence is "credible" is a question for the jury at a new trial: "[T]he *jury* is the lie detector." *United States v. Scheffer*, 523 U.S. 303, 313 (1998) (emphasis in original) (citation omitted); *see also id.* ("Determining the weight and credibility" of "witness[es]" has "long been held to be the 'part of every case [that] belongs to the jury'" (citation omitted)). Besides, in a post-conviction posture, defendants have no power to subpoena or compel evidence. It blinks reality to require defendants to obtain and "present" evidence, Pet.App.3a., to corroborate information that, until now, was in the prosecution's exclusive control.

Lest any doubt remain, this Court has already rejected Louisiana's attempt to tether *Brady* to the "credibility" of the withheld evidence. In *Smith v. Cain*, 565 U.S. 73 (2012), this Court vacated a conviction where Louisiana prosecutors concealed earlier "statements by [the State's witness] that conflict with his testimony identifying [the defendant] as a perpetrator." *Id.* at 75. Louisiana argued that those concealed statements were not credible because they were "made five days after the crime" and "can be explained by fear of retaliation." *Id.* at 76. This Court was unpersuaded, explaining that Louisiana's "argument offers a reason that the jury *could* have disbelieved [the witness's] undisclosed statements, but gives us no confidence that it *would* have done so." *Id.* (emphases in original); *see also Glossip v. Oklahoma*, 145 S. Ct. 612, 629 (2025) ("[The] assum[ption] [that] the jury would have believed [the witness] no matter what . . . has no place in [*Brady*'s] materiality analysis.").

Finally, if the district court was referring to out-of-court "statements" made by Scott and Brown, then the court's "credibility" requirement would fail even basic

logic. Scott and Brown's statements constitute *Brady* material because the statements contradict those witnesses' later accounts and could therefore be used to impeach them. *See* Pet.9, 21; *see also Giglio*, 405 U.S. at 154-55. Accordingly, Mr. Skinner's defense does not even turn on establishing Scott and Brown's credibility; it turns on Scott and Brown being *not* credible. By revealing Scott and Brown's "hot-and-cold" behavior—and the "dubious" and "suspect" nature of their testimony, *Wearry*, 577 U.S. at 393—the withheld, inconsistent statements support that defense. *See California v. Green*, 399 U.S. 149, 155-57 (1970) (explaining difference between impeachment- and substantive-use of evidence). It flips impeachment on its head to require Mr. Skinner to establish the credibility of the very same witnesses he seeks to impeach.[7]

[7] The district court might have confused the *Brady* standard with the "actual innocence" standard. The *Brady* standard—used to ensure a fair trial—requires reversal so long as, considering the new evidence, courts cannot be "confident that the jury's verdict would have been the same." *Kyles*, 514 U.S. at 453. The "actual innocence standard"—used to resurrect procedurally defaulted claims or successive petitions—requires courts to find that, considering "the new evidence, no juror, acting reasonably, would have voted to find [the defendant] guilty beyond a reasonable doubt." *Schlup v. Delo*, 513 U.S. 298, 329 (1995); *see also Murray v. Carrier*, 477 U.S. 478, 497 (1986). The latter is much more demanding because, by the time the "actual innocence" standard kicks in, the defendant already has exhausted appellate and postconviction remedies. Moreover, the "actual innocence" standard is meant to address the unique threat that defaulted claims and successive petitions pose to "the finality of state-court judgments and to principles of comity and federalism." *Schlup*, 513 U.S. at 318. A *Brady* claim, raised as this one is, raises none of those concerns.

CONCLUSION

Once again, the Louisiana courts rendered decisions that "r[an] up against settled constitutional principles." *Wearry*, 577 U.S. at 392 (reversing Louisiana courts' denial of relief on *Brady* claim); *see also Smith*, 565 U.S. at 75 (again, reversing Louisiana courts' denial of relief on *Brady* claim). They not only left undisturbed "a conviction that is constitutionally flawed," *Wearry*, 577 U.S. at 396, but also—along the way—profoundly damaged professional ethical standards and the justice system at large. This Court should grant review or summarily reverse.

Respectfully submitted,

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APPENDIX

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APPENDIX A

Ethics Rules Governing Prosecutors' Disclosure Obligation, By State

Ala. R. Pro. Conduct 3.8(1)(d)

The prosecutor in a criminal case shall . . . not willfully fail to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Alaska R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Ariz. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Ark. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Cal. R. Pro. Conduct 5-110(D)

The prosecutor in a criminal case shall . . . [m]ake timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows or reasonably should know tends to negate the guilt of the accused . . . .

Colo. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . timely disclose to the defense all information known to the prosecutor, regardless of admissibility, that the prosecutor also knows or reasonably should know tends to negate the guilt of the accused or mitigate the offense . . . .

Conn. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . [m]ake timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Del. Laws.' R. Pro. Conduct 3.8(d)(1)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

D.C. R. Prof. Conduct 3.8(d)

The prosecutor in a criminal case shall not . . . [i]ntentionally fail to disclose to the defense, upon request and at a time when use by the defense is reasonably feasible, any evidence or information, which can include impeachment

information or information tending to support a motion to suppress evidence, that the prosecutor knows or reasonably should know tends to negate the guilt of the accused or to mitigate the offense . . . .

Fla. R. Pro. Conduct 4-3.8(c)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.

Ga. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or that mitigates the offense.

Haw. R. Pro. Conduct 3.8(d)

A public prosecutor or other government lawyer shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Idaho R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Ill. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Ind. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Iowa R. Pro. Conduct 32:3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Kan. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Ky. Sup. Ct. R. 3.130(3.8)(c)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

La. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows, or reasonably should know, either tends to negate the guilt of the accused or mitigates the offense . . . .

Me. R. Pro. Conduct 3.8(b)

The prosecutor shall . . . make timely disclosure in a criminal or juvenile case to counsel for the defendant, or to a defendant without counsel, of the existence of evidence or information known to the prosecutor after diligent inquiry and within the prosecutor's possession or control, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

Md. R. 19-303.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Mass. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Mich. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information

known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense . . . .

Minn. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Miss. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Mo. Sup. Ct. R. 4-3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Mont. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Neb. Sup. Ct. R. § 3-503.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information

known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Nev. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . [m]ake timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

N.H. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

N.J. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

N.M. R. Pro. Conduct 16-308(D)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

N.Y. R. Pro. Conduct 3.8(b)

A prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the

defendant or to a defendant who has no counsel of the existence of evidence or information known to the prosecutor or other government lawyer that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the sentence . . . .

N.C. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . after reasonably diligent inquiry, make timely disclosure to the defense of all evidence or information required to be disclosed by applicable law, rules of procedure, or court opinions including all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

N.D. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . disclose to the defense at the earliest practical time all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Ohio R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall not . . . fail to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Okla. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Or. R. Pro. Conduct 3.8(b)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Pa. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

R.I. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

S.C. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

S.D. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . [m]ake timely disclosure to the defense of all evidence or information known to the prosecutor that tends to exculpate the guilt of the accused . . . .

Tenn. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case . . . shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Tex. Disciplinary R. Pro. Conduct 3.09(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Utah Code Jud. Admin. r. 13-3.8(d)

The prosecutor in a criminal case shall . . . [m]ake timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Vt. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Va. R. Pro. Conduct 3.8(d)

A lawyer engaged in a prosecutorial function shall . . . make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence which the prosecutor knows tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment . . . .

Wash. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

W. Va. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Wis. Sup. Ct. R. 20:3.8(f)(1)

A prosecutor, other than a municipal prosecutor, in a criminal case or a proceeding that could result in deprivation of liberty shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .

Wyo. R. Pro. Conduct 3.8(d)

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense . . . .