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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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BALDWIN *v.* REESECERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 02–964. Argued December 8, 2003—Decided March 2, 2004

Before seeking federal habeas relief, a state prisoner must exhaust available state remedies, 28 U. S. C. §2254(b)(1), giving the State the “‘opportunity to . . . correct’ alleged violations of its prisoners’ federal rights,” *Duncan v. Henry*, 513 U. S. 364, 365, which means he must “fairly present” his claim in each appropriate state court to alert that court to the claim’s federal nature. After respondent Reese appealed his state convictions and sentences and the lower state courts denied him collateral relief, the Oregon Supreme Court denied him discretionary review. His subsequent federal habeas petition raised, *inter alia*, a federal constitutional ineffective-assistance-of-appellate-counsel claim. The Federal District Court held that Reese had not “fairly presented” this claim to the state courts because his state appeals court brief had not indicated that he was complaining about a federal law violation. The Ninth Circuit reversed, finding the “fair presentation” requirement satisfied because the State Supreme Court justices had had the *opportunity* to read the lower court decision before deciding whether to grant discretionary review. And, had they read that opinion, they would have, or should have, realized that his claim rested upon federal law.

Held: A state prisoner ordinarily does not “fairly present” a federal claim to a state court if that court must read beyond a petition, a brief, or similar papers to find material that will alert it to the presence of such a claim. Pp. 3–6.

(a) Assuming that Reese’s petition by itself did not properly alert the State Supreme Court to the federal nature of his claim, Reese failed to meet the “fair presentation” standard. To say that a petitioner “fairly presents” a federal claim when an appellate judge can discover that claim only by reading the lower court opinions is to say

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that those judges *must* read those opinions—for otherwise they would forfeit the State’s opportunity to decide the claim in the first instance. Federal habeas law does not impose such a requirement. That requirement would force state appellate judges to alter their ordinary review practices, since they do not necessarily read lower court opinions in every case. And it would impose a serious burden upon those judges with discretionary review powers, whose heavy workloads would be significantly increased if they had to read through lower court opinions or briefs in every instance. Finally, the requirement is unnecessary to avoid imposing unreasonable procedural burdens upon state prisoners who may eventually seek federal habeas. A litigant can easily indicate his claim’s federal law basis in a petition or brief, for example, by citing to the federal source of law on which he relies or simply labeling the claim “federal.” Pp. 3–5.

(b) This Court is not wrong to assume that Reese’s petition *by itself* failed to alert the State Supreme Court to his claim’s federal nature. He must concede that his petition does not explicitly say that “ineffective assistance of appellate counsel” refers to a federal claim, cite any case that might have alerted the court to his claim’s alleged federal nature, or even contain a factual description supporting his claim. Reese asserts that the petition nonetheless “fairly presents” a federal “ineffective assistance” claim because (1) “ineffective” is a term of art in Oregon that refers only to federal law claims, and (2) the state law standards for adjudicating state and federal “inadequate/ineffective appellate assistance” claims are identical. This Court rejects his first argument because he has not demonstrated that state law uses “ineffective assistance” as referring only to a federal law, rather than a similar state law, claim. However, Reese’s second argument was not addressed by, or presented to, the Ninth Circuit, and first appeared here in Reese’s merits brief. Because the issue is complex and lower court consideration would help in its resolution, the Court, without expressing any view on the issue’s merits, exercises its Rule 15.2 discretion and deems the argument waived. Pp. 5–6.

282 F. 3d 1184, reversed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O’CONNOR, SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. STEVENS, J., filed a dissenting opinion.