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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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DISTRICT ATTORNEY'S OFFICE FOR THE THIRD JUDICIAL DISTRICT ET AL. *v.* OSBORNE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 08–6. Argued March 2, 2009—Decided June 18, 2009

Respondent Osborne was convicted of sexual assault and other crimes in state court. Years later, he filed this suit under 42 U. S. C. §1983, claiming he had a due process right to access the evidence used against him in order to subject it to DNA testing at his own expense. The Federal District Court first dismissed his claim under *Heck* v. *Humphrey*, 512 U. S. 477, holding that Osborne must proceed in habeas because he sought to set the stage for an attack on his conviction. The Ninth Circuit reversed, concluding that §1983 was the proper vehicle for Osborne's claims. On remand, the District Court granted Osborne summary judgment, concluding that he had a limited constitutional right to the new testing under the unique and specific facts presented, *i.e.,* that such testing had been unavailable at trial, that it could be accomplished at almost no cost to the State, and that the results were likely to be material. The Ninth Circuit affirmed, relying on the prosecutorial duty to disclose exculpatory evidence under, *e.g., Brady* v. *Maryland*, 373 U. S. 83.

Held: Assuming Osborne's claims can be pursued using §1983, he has no constitutional right to obtain postconviction access to the State's evidence for DNA testing. Pp. 8–21.

(a) DNA testing has an unparalleled ability both to exonerate the wrongly convicted and to identify the guilty. The availability of new DNA testing technologies, however, cannot mean that every criminal conviction, or even every criminal conviction involving biological evidence, is suddenly in doubt. The task of establishing rules to harness DNA's power to prove innocence without unnecessarily overthrowing the established criminal justice system belongs primarily to the legislature. See *Washington* v. *Glucksberg*, 521 U. S. 702, 719. Forty-six

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States and the Federal Government have already enacted statutes dealing specifically with access to evidence for DNA testing. These laws recognize the value of DNA testing but also the need for conditions on accessing the State's evidence. Alaska is one of a handful of States yet to enact specific DNA testing legislation, but Alaska courts are addressing how to apply existing discovery and postconviction relief laws to this novel technology. Pp. 8–11.

(b) The Court assumes without deciding that the Ninth Circuit was correct that *Heck* does not bar Osborne's §1983 claim. That claim can be rejected without resolving the proper application of *Heck*. Pp. 12–13.

(c) The Ninth Circuit erred in finding a due process violation. Pp. 13–21.

(i) While Osborne does have a liberty interest in pursuing the postconviction relief granted by the State, the Ninth Circuit erred in extending the *Brady* right of pretrial disclosure to the postconviction context. Osborne has already been found guilty and therefore has only a limited liberty interest in postconviction relief. See, *e.g., Herrera* v. *Collins*, 506 U. S. 390, 399. Instead of the *Brady* inquiry, the question is whether consideration of Osborne's claim within the framework of the State's postconviction relief procedures "offends some [fundamental] principle of justice" or "transgresses any recognized principle of fundamental fairness in operation." *Medina* v. *California*, 505 U. S. 437, 446, 448. Federal courts may upset a State's postconviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided.

There is nothing inadequate about Alaska's postconviction relief procedures in general or its methods for applying those procedures to persons seeking access to evidence for DNA testing. The State provides a substantive right to be released on a sufficiently compelling showing of new evidence that establishes innocence. It also provides for discovery in postconviction proceedings, and has—through judicial decision—specified that such discovery is available to those seeking access to evidence for DNA testing. These procedures are similar to those provided by federal law and the laws of other States, and they satisfy due process. The same is true for Osborne's reliance on a claimed federal right to be released upon proof of "actual innocence." Even assuming such a right exists, which the Court has not decided and does not decide, there is no due process problem, given the procedures available to access evidence for DNA testing. Pp. 13–18.

(ii) The Court rejects Osborne's invitation to recognize a free-standing, substantive due process right to DNA evidence untethered from the liberty interests he hopes to vindicate with it. In the circumstances of this case, there is no such right. Generally, the Court

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is "reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended." *Collins* v. *Harker Heights*, 503 U. S. 115, 125. There is no long history of a right of access to state evidence for DNA testing that might prove innocence. "The mere novelty of such a claim is reason enough to doubt that 'substantive due process' sustains it." *Reno* v. *Flores*, 507 U. S. 292, 303. Moreover, to suddenly constitutionalize this area would short-circuit what has been a prompt and considered legislative response by Congress and the States. It would shift to the Federal Judiciary responsibility for devising rules governing DNA access and creating a new constitutional code of procedures to answer the myriad questions that would arise. There is no reason to suppose that federal courts' answers to those questions will be any better than those of state courts and legislatures, and good reason to suspect the opposite. See, *e.g., Collins, supra,* at 125. Pp. 19–21.

521 F. 3d 1118, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. ALITO, J., filed a concurring opinion, in which KENNEDY, J., joined, and in which THOMAS, J., joined as to Part II. STEVENS, J., filed a dissenting opinion, in which GINSBURG and BREYER, JJ., joined, and in which SOUTER, J., joined as to Part I. SOUTER, J., filed a dissenting opinion.