No. 23-1332

IN THE
# Supreme Court of the United States

JARIUS BROWN,

*Petitioner*,

v.

JAVARREA POUNCY, ET AL.,

*Respondents*.

**On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit**

**BRIEF OF AMICUS CURIAE PUBLIC JUSTICE IN SUPPORT OF PETITIONERS**

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## INTEREST OF AMICUS CURIAE

Public Justice is a nonprofit legal advocacy organization that specializes in precedent-setting, socially-significant civil litigation, with a focus on fighting corporate and governmental misconduct.[1] The organization maintains an Access to Justice Project that pursues litigation and advocacy efforts to remove procedural obstacles that unduly restrict the ability of workers, consumers, and people whose civil rights have been violated to seek redress for their injuries in the civil court system. This case is of interest to Public Justice because it raises questions regarding the applicable statute of limitations for § 1983 claims. The improper application of statutes of limitations is a major procedural barrier that prevents individuals whose federal rights have been violated from enforcing those rights in court.

## SUMMARY OF ARGUMENT

Certiorari is warranted because the circuit courts' rote application of state residual statutes of limitations is contrary to the purpose of the federal civil rights framework. Congress passed § 1 of the Enforcement Act of 1871, today codified at 42 U.S.C. § 1983, to allow victims of civil rights abuses to prosecute claims against state actors in federal court rather than state court. But the statute of limitations the Fifth Circuit applied flipped that purpose on its head by relegating victims with timely state-law

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[1] Pursuant to Rule 37.6, Amicus affirms that no counsel for any party authored this brief in whole or in part, and no person or entity other than Amicus, its members, and its counsel has made a monetary contribution to support the brief's preparation or submission. Pursuant to Rule 37.2, counsel for Amicus provided notice to counsel of record on July 3, 2024.

claims against state actors to the very state courts § 1983 was designed to avoid. Where, as here, the limitations period for bringing a similar claim in state court is longer than the limitations period for bringing a § 1983 claim in federal court, the federal court becomes less accessible to victims of civil rights abuses than state court. This Court should grant review to rectify this upside-down consequence of the decision below.

Congress did not specify a statute of limitations in enacting § 1983, but instead, in the absence of a suitable federal law to look to, instructed courts to borrow the appropriate limitations period from the forum state. *See* 42 U.S.C. § 1988. This Court in *Wilson v. Garcia*, 471 U.S. 261 (1985), and *Owens v. Okure*, 488 U.S. 235 (1989), instructed courts on which state-law statute of limitations to borrow, explaining that courts should apply the forum state's general or residual statute of limitations for personal injury actions. But the Court in both *Wilson* and *Owens* recognized that there is always a final inquiry before a court can apply a state-law limitation: Per the text of § 1988, courts may not apply a state-law limitation if it is "inconsistent" with the federal policy underlying § 1983.

While federal courts should generally apply the forum state's residual limitation for personal injury actions to § 1983 claims, they should not do so in the limited circumstances where, as here, the residual limitations period is shorter than the statute of limitations that would apply to an analogous state-law claim. Applying a one-year residual limitation to time bar Jarius Brown from a federal forum, even though the Louisiana Civil Code would allow him to

timely file an analogous state-law claim based on the same facts in state court, is categorically inconsistent with the federal policy underlying § 1983: to provide individuals whose federal rights have been violated with access to federal courts in lieu of state courts.

Additionally, because this Court has instructed courts to look to related federal laws designed to accommodate a balance of interests similar to those at stake in the federal statute providing the cause of action, the best source from which to draw a limitations period is the residual four-year limitation for federal statutes codified at 28 U.S.C. § 1658. While the law does not by its terms apply directly to § 1983, it was enacted to balance the very same interests at stake in setting a statute of limitations for § 1983 claims and is therefore well-suited to fill the legal gap when a state-law limitation is inconsistent with the federal policy underlying § 1983. Because applying the one-year residual personal injury limitation in Louisiana, Tennessee, Kentucky, and Puerto Rico would be inconsistent with § 1983, this Court should grant certiorari to hold that the appropriate statute of limitation is the residual four-year limitation for federal statutes.

## REASONS FOR GRANTING THE PETITION

### I. Applying a Shorter Limitations Period to a § 1983 Claim than to the Equivalent Claim in State Court Is Inconsistent with the Federal Policy Underlying § 1983.

This Court should grant certiorari to make clear that applying a limitations period to a § 1983 claim that is shorter than if the plaintiff had brought a similar claim in state court is inconsistent with § 1983's policy of ensuring access to a neutral federal

forum in lieu of state court. That's because it would make federal court *less* accessible than state court and more hostile towards civil rights claims. Section 1988 "endorses the borrowing of state-law limitations provisions" for § 1983 claims, but only "where doing so is consistent with federal law." *Owens*, 488 U.S. at 239. Specifically, this Court has held that courts should borrow the forum state's general or residual personal injury statute of limitations for § 1983 claims, but "only if [that limitation] is not 'inconsistent with the Constitution and laws of the United States.'" *Burnett v. Grattan*, 468 U.S. 42, 48 (1984) (quoting 42 U.S.C. § 1988).

A state statute of limitation is inconsistent with federal law if its "application . . . 'would be inconsistent with the federal policy underlying the cause of action under consideration.'" *Robertson v. Wegmann*, 436 U.S. 584, 590 (1978); *see also Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 377 (2004) (recognizing a "settled practice . . . to adopt a local time limitation as federal law if it [is] not inconsistent with federal law or policy to do so"); *Owens*, 488 U.S. at 239 (same). Thus, courts cannot apply a one-year limitations period to § 1983 claims if doing so would be inconsistent with the federal policy underlying § 1983.

Applying a statute of limitations to a § 1983 claim that is *shorter* than the limitation that would apply to an analogous state-law claim is inconsistent with the federal policy underlying § 1983 because it eviscerates the law's primary purpose: to provide victims of civil rights deprivations with access to federal courts in lieu of state courts. *See Monroe v. Pape*, 365 U.S. 167, 174–80 (1961). Congress enacted

the law "to provide a federal remedy where the state remedy, though adequate in theory, was not available in practice" because those "representing [the] State . . . [were] unable or unwilling to enforce a state law." *Id.* at 174, 176. Indeed, "[i]t was not the unavailability of state *remedies* but the failure of certain States to *enforce* the laws with an equal hand that furnished the powerful momentum behind this [law]." *Id.* at 174–75 (emphases added). In enacting § 1983, Congress "was concerned that state instrumentalities could not protect [federal] rights; it realized that state officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings extended to the state courts." *Mitchum v. Foster*, 407 U.S. 225, 242 (1972). Thus, the federal policy underlying § 1983 was to give civil rights plaintiffs access to federal courts, providing them a forum where they would not face hostility or discrimination for asserting claims against state actors.

But applying a shorter statute of limitation to a § 1983 action than would apply to a state-law action based on the same set of facts flips that federal policy on its head. It imposes a state-law-derived procedural barrier on civil rights plaintiffs' access to federal courts, forcing them to bring their claims against state actors in state court.[2] Giving a plaintiff *less*

[2] Whether this Court believes that state courts today will fairly enforce claims against state actors is beside the point. Courts must look at the original federal policy underlying the statute at the time it was enacted. *See Burnett*, 468 U.S. at 52 n.14 (assessing conflict between state statute and "Congress' policy *enacted in* the relevant substantive law" (emphasis added)); *Robertson*, 436 U.S. at 590–91 (identifying "underlying

*Footnote continued on next page*

opportunity to seek redress for the deprivation of a federal right in federal court under § 1983 than would be afforded to them by state law in state court is inconsistent with the federal policy underlying § 1983 because it requires the plaintiff to vindicate their civil rights in state court instead of federal court.

Justice Rehnquist made this very point in *Burnett*. He explained that a state statute of limitation is inconsistent with the policy underlying § 1983 if it "discriminates against federal claims, such that a federal claim would be time-barred, while an equivalent state claim would not." 468 U.S. at 60–61 (Rehnquist, J., concurring in the judgment); *see also Johnson v. Davis*, 582 F.2d 1316, 1317, 1319 (4th Cir. 1978) (holding that "a shorter period for remedying a 'constitutional tort' than for remedying the underlying state tort" would constitute "an unreasonable discrimination between the assertion of federally protected rights and rights protected under Virginia law"). Therefore, while courts must generally—per *Owens*—apply the forum state's general or residual personal injury limitation to a § 1983 claim, courts cannot apply that limitation when it is *shorter* than the limitation for an analogous state-law claim, which would make federal court less accessible than state court.

Here, the Fifth Circuit held that Louisiana's one-year statute of limitations for residual personal injury claims bars Mr. Brown's § 1983 claim in federal

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policies" of § 1983 by looking to cases examining the law's purpose when it was first enacted). Regardless, even today, state courts may impose procedural hurdles where federal courts do not.

court.[3] *See generally* Pet. App. 1a–15a. But Louisiana courts have since confirmed that his state-law claims—against the same defendants for the same conduct—can likely proceed in state court because the applicable limitations period for a state-law claim based on an "act defined as a crime of violence" is two years, regardless of whether the defendant has been prosecuted. *Brown v. Pouncy*, __ So.3d __, 2024 WL 2307514, at *5 (La. Ct. App. May 22, 2024); *see* La. Civ. Code art. 3493.10. Because Mr. Brown alleges that he sustained his injuries as a result of an "act defined as a crime of violence"—the defendants intentionally used force to inflict serious bodily injury on Mr. Brown—the two-year limitations period applies to his state-law claim.[4]

Thus, applying Louisiana's one-year residual statute to Mr. Brown's § 1983 claims has the exact opposite impact Congress intended when it enacted the statute: Applying the one-year residual limitations period discriminates against his federal claims by making his federal claims time-barred

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[3] While Louisiana has since enlarged its residual limitations period to two years, the one-year period would still apply to Mr. Brown and anyone else injured prior to July 1, 2024. *See* 2024 La. Sess. Law Serv. Act 423. Moreover, as explained *infra*, individuals in other jurisdictions also encounter this issue.

[4] While the Louisiana appellate court remanded for the trial court to determine in the first instance whether Mr. Brown had alleged that his "damages [were] sustained as a result of an act defined as a crime of violence," *see* La. Civ. Code art. 3493.10, he certainly did so. Louisiana law defines a crime of violence to include "the intentional use of force or violence upon the person of another" "when the offender intentionally inflicts serious bodily injury," La. Stat. §§ 14:2(B)(6), 14:33, 14:34.1(A), which is precisely what Mr. Brown alleged. *See* Pet. 8–9.

when his state claims are not.

Louisiana is not the only jurisdiction with a short residual limitations period where this disparity arises. For example, while Tennessee has a one-year residual statute of limitation that has been applied to § 1983 claims, *see Bannister v. Knox Cnty. Bd. of Educ.*, 49 F.4th 1000, 1008 (6th Cir. 2022), it has a two-year limitations period for state-law claims when the would-be defendant has been criminally prosecuted within one year for the actions in question, Tenn. Code § 28-3-104(a)(2). Here, had the facts giving rise to Mr. Brown's claims taken place in Tennessee and the defendants had been prosecuted earlier, within one year instead of four, *see* Pet. 9–10, he would have faced the same scenario as the one he faces in Louisiana: His § 1983 claim would be time-barred, but his state-law claim based on the same facts and against the same defendants would not be. Whether in Louisiana, Tennessee, or any other jurisdiction where a similar disparity would arise, applying the residual statute of limitation makes it *more* difficult for those whose civil rights have been violated to bring suit in federal court than in state court—directly contrary to the intent of Congress in enacting § 1983.[5]

Assessing whether applying the one-year statute of limitation would be inconsistent with § 1983 is consistent with this Court's precedent. The Fifth Circuit believed that doing so would be foreclosed by this Court's decisions in *Wilson* and *Owens*. Pet. App. 9a. Not so. Neither of those cases addressed the

[5] In addition to Louisiana and Tennessee, Kentucky, and Puerto Rico also have residual one-year statutes of limitations. *See* Pet. 19 (collecting statutes).

situation presented here: where the otherwise applicable general or residual personal injury statute of limitation is *shorter than* the analogous state-law limitation. The *Wilson* court applied the same three-year limitations period to the plaintiff's § 1983 claims that the Tenth Circuit below had found to apply to plaintiff's analogous state-law claim; and the *Owens* court applied a residual personal injury statute of limitation that was *longer* than the statute of limitation applicable to the state-law analogue. Indeed, in neither case did this Court explore whether the state-law limitation being applied was "inconsistent" with federal policy underlying § 1983. In *Owens*, the Court expressly noted that it was not reaching the question. *See* 488 U.S. at 251 n.13.

This Court should reach the question now.

## II. Because the Designated State-Law Limitation Is Inconsistent with § 1983, This Court Should Grant Certiorari to Consider Applying the Four-Year Residual Limitation for Federal Statutes Provided by 28 U.S.C. § 1658.

When applying the residual state-law limitation would be inconsistent with § 1983—as applying a one-year limitation would be here—courts should look to federal law for the timeliness rule to be applied. *See DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 161–62 (1983) (explaining that, when "state statutes of limitations [are] unsatisfactory vehicles for the enforcement of federal law," the Court has "instead used timeliness rules drawn from federal law—either express limitations periods from related federal statutes, or such alternatives as laches").

This Court should grant certiorari to consider

whether, when that principle is followed in situations like this one, the residual "catchall 4–year statute of limitation for actions arising under federal statutes enacted after December 1, 1990," codified at 28 U.S.C. § 1658, should be applied. *Jones*, 541 U.S. at 371. "[W]hen the state limitations periods with any claim of relevance would '"frustrate or interfere with the implementation of national policies,"' or be 'at odds with the purpose or operation of federal substantive law,'" this Court has "looked for a period that might be provided by analogous federal law, more in harmony with the objectives of the immediate cause of action." *N. Star Steel Co. v. Thomas*, 515 U.S. 29, 34 (1995) (quoting *DelCostello*, 462 U.S. at 161) (other citations omitted). Specifically, it has directed courts in this situation to apply "related" federal statutes of limitation, especially when they are "actually designed to accommodate a balance of interests very similar to th[ose] at stake." *DelCostello*, 462 U.S. at 162, 169.

Although § 1658 does not apply directly by its own terms to § 1983 actions, it is designed to balance the very same interests that are at stake in setting a timeliness rule for such actions. Congress's interest when enacting § 1658 was to "alleviat[e] the uncertainty inherent in the practice of borrowing state statutes of limitations while at the same time protecting settled interests." *Jones*, 541 U.S. at 382. Congress made § 1658 prospective rather than retroactive so as to not obviate "the difficult work [that] already has been done" in borrowing state-law limitations periods. *Id.* But where, as here, the borrowed state-law limitation is inconsistent with § 1983 and the parties are not seeking to apply § 1658 on its own terms, but rather through § 1988, that

rationale is immaterial. The four-year catchall statute of limitation for federal statues reflects the very same balance of interests—including § 1983's "chief goals of compensation and deterrence" and its "subsidiary goals of uniformity and federalism," *Hardin v. Straub*, 490 U.S. 536, 539 (1989)—that are at stake when courts must determine a timeliness rule for § 1983 actions.

Moreover, applying the four-year limitations period in § 1658 where the designated state-law limitation is inconsistent with § 1983 would further the uniformity and predictability interests that drove the Court's decisions in *Wilson* and *Owens*. *See Wilson*, 471 U.S. at 270 (discussing "federal interest in uniformity"); *Owens*, 488 U.S. at 243, 248 (discussing predictability concerns). If § 1658 fills the gap where applying the state-law limitation would be inconsistent, there would be only two possible statutes of limitations for any § 1983 claim: the general or residual state-law personal injury limitations period designated by *Wilson* and *Owens*, and the four-year federal limitations period in § 1658. Two possible and easily-identifiable limitations provides predictability.

In short, when the state-law residual statute of limitations is shorter than the limitation that would apply to an analogous state-law claim, courts should apply the catchall four-year statute of limitation in § 1658 because it is a "closely related" federal statute that reflects the same balance of interests at stake in setting a timeliness requirement for the filing of § 1983 actions, and because doing so promotes uniformity and predictability.

## CONCLUSION

The petition should be granted.

Respectfully submitted,

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