AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 11: The Contemporary Era—Criminal Justice/Due Process and Habeas Corpus/Habeas Corpus

---

Felker v. Turpin, 518 U.S. 651 (1996)

Ellis Wayne Felker was sentenced to death after being convicted of raping and murdering Joy Ludlam. His first petition for habeas corpus, alleging numerous constitutional errors at his trial, was rejected by both state and federal courts. On April 29, 1996, the week before his scheduled execution, Felker filed a second habeas corpus petition. The Court of Appeals for the Eleventh Circuit refused to allow him to file on the ground that the claims in the petition did not meet the standards for a second petition set out in the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA). That law requires dismissal of

> *a second or successive habeas corpus application . . . unless . . . the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.*

Felker then filed a new petition for habeas corpus relief before the Supreme Court.

The Supreme Court unanimously declared that the AEDPA prohibited review of Turpin's appeal or request for a writ of certiorari. Chief Justice Rehnquist's opinion for the Court declared that the AEDPA was a legitimate means for preventing abuse of the habeas corpus writ. Suppose after losing this case, Felker discovered that the prosecution had withheld crucial exculpatory evidence (this is a constitutional violation under Brady v. United States *[1970]). What options would he have? Could Congress bar all successive petitions, no matter what the reason?*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The [AEDPA] prevents this Court from reviewing a court of appeals order denying leave to file a second habeas petition by appeal or by writ of certiorari. More than a century ago, we considered whether a statute barring review by appeal of the judgment of a circuit court in a habeas case also deprived this Court of power to entertain an original habeas petition. *Ex parte Yerger* (1869).

. . .

In *Yerger,* we considered whether the [Repeal] Act of 1868 deprived us not only of power to hear an appeal from an inferior court's decision on a habeas petition, but also of power to entertain a habeas petition to this Court under § 14 of the Act of 1789. We concluded that the 1868 Act did not affect our power to entertain such habeas petitions. We explained that the 1868 Act's text addressed only jurisdiction over appeals conferred under the Act of 1867, not habeas jurisdiction conferred under the Acts of 1789 and 1867. . . .

Turning to the present case, we conclude that Title I of the Act has not repealed our authority to entertain original habeas petitions, for reasons similar to those stated in *Yerger.* No provision of Title I mentions our authority to entertain original habeas petitions. . . .

. . .

. . . The Act does remove our authority to entertain an appeal or a petition for a writ of certiorari to review a decision of a court of appeals exercising its "gatekeeping" function over a second petition. But since it does not repeal our authority to entertain a petition for habeas corpus, there can be no plausible argument that the Act has deprived this Court of appellate jurisdiction in violation of Article III, § 2.

. . .

The Act requires a habeas petitioner to obtain leave from the court of appeals before filing a second habeas petition in the district court. But this requirement simply transfers from the district court to the court of appeals a screening function which would previously have been performed by the district court as required by 28 U.S.C. § 2254 Rule 9(b). The Act also codifies some of the pre-existing limits on successive petitions, and further restricts the availability of relief to habeas petitioners. But we have long recognized that "the power to award the writ by any of the courts of the United States, must be given by written law,", and we have likewise recognized that judgments about the proper scope of the writ are "normally for Congress to make."

The new restrictions on successive petitions constitute a modified res judicata rule, a restraint on what is called in habeas corpus practice "abuse of the writ." In *McCleskey v. Zant* (1991), we said that "the doctrine of abuse of the writ refers to a complex and evolving body of equitable principles informed and controlled by historical usage, statutory developments, and judicial decisions." The added restrictions which the Act places on second habeas petitions are well within the compass of this evolutionary process, and we hold that they do not amount to a "suspension" of the writ contrary to Article I, § 9.

. . . Reviewing petitioner's claims here, they do not materially differ from numerous other claims made by successive habeas petitioners which we have had occasion to review on stay applications to this Court. Neither of them satisfies the requirements of the relevant provisions of the Act, let alone the requirement that there be "exceptional circumstances" justifying the issuance of the writ.

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE BREYER join, concurring.

. . .

JUSTICE SOUTER, with whom JUSTICE STEVENS and JUSTICE BREYER join, concurring.

. . . Because petitioner sought only a writ of certiorari (which Congress has foreclosed) and a writ of habeas corpus (which, even applying the traditional criteria, we would choose to deny). I have no difficulty with the conclusion that the statute is not on its face, or as applied here, unconstitutional. I write only to add that if it should later turn out that statutory avenues other than certiorari for reviewing a gatekeeping determination were closed, the question whether the statute exceeded Congress's Exceptions Clause power would be open. The question could arise if the courts of appeals adopted divergent interpretations of the gatekeeper standard.