No. 25-253

IN THE
Supreme Court of the United States

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, ET AL.,
Petitioners,

v.

MICHAEL HOWE, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF NORTH DAKOTA
Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF *AMICUS CURIAE* AMERICAN JEWISH COMMITTEE IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The American Jewish Committee ("AJC") is a national organization founded in 1906 to protect the civil and religious rights of Jews. AJC believes that the most effective way to achieve that goal is to safeguard the civil and religious rights of all Americans.

With over 125,000 members and supporters and twenty-six regional offices, AJC has long worked to promote democracy, pluralism, and civil and human rights—including and especially the fundamental issue of enfranchisement. AJC firmly believes that the guiding principle of our country, and any democracy, is that the government needs to make it simple and easy to vote.

A critical part of AJC's mission is working to oppose legislative initiatives that lead to the disenfranchisement of voters. Section 2 of the Voting Rights Act provides crucial protections to prevent infringements of the rights of American voters. Private plaintiffs' ability to enforce that provision is central to ensuring that all Americans can exercise their right to vote and, through that right, to protect all other rights, including the protections for religious liberty enshrined in the First Amendment.

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[1] Pursuant to this Court's Rule 37.2, *amicus* provided timely notice to all parties of its intent to file this *amicus* brief. Pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus* or their counsel made a monetary contribution to this brief 's preparation.

For these reasons, AJC has a strong interest in ensuring that private plaintiffs remain able to enforce Section 2 of the Voting Rights Act.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners and *amicus* come before this Court because the Eighth Circuit has determined that Section 2 of the Voting Rights Act failed to "unambiguously confer an individual right" enforceable under 42 U.S.C. § 1983. *See Turtle Mountain Band of Chippewa Indians v. Howe*, 137 F.4th 710, 721 (8th Cir. 2025). Together with *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, 86 F.4th 1204 (8th Cir. 2023), which held that Section 2 does not provide for an implied private right of action, the Eighth Circuit has foreclosed private plaintiffs from vindicating their rights under the statute. These decisions conflict with this Court's longstanding approach to interpreting Section 1983 and the Voting Rights Act, upend decades of settled precedent, and create a circuit split, with grave ramifications for the enforcement of the nation's voting rights laws.

The Court should grant this petition because the Eighth Circuit has decided an "important question of federal law that has not been, but should be, settled by this Court," and has done so in a way that "conflicts with relevant decisions of this Court." S. Ct. Rule 10(c). Section 1983 and the Voting Rights Act were enacted against the backdrop of Reconstruction and the Civil Rights Movement, respectively, and Congress has explicitly directed courts to consider this history in interpreting whether Section 2 contains a private right of action. Moreover, Congress has explicitly stated that it intended to create a private right of action to enforce Section 2. This Court's decision in *Gonzaga University v. Doe*, in turn, requires courts to inquire into the legislature's intent to determine

whether a federal statute provides a private right of action. 536 U.S. 273, 283 (2002). Nowhere in its decision, however, does the Eighth Circuit acknowledge Congress's explicit statements that it intended to create a private right of action. *See infra* pp. 7-10. To the contrary, the Eighth Circuit dismissed the history of those statutes and disregarded *Gonzaga*'s directive to consider Congress's intent in determining whether a private right action exists.

The Eighth Circuit's decision also conflicts with the voting rights decisions of this Court and other circuits. A majority of this Court previously recognized an implied private right of action under the Voting Rights Act in *Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996). Justice Stevens, writing for himself and Justice Ginsburg, noted that "the existence of a private right of action under Section 2 . . . has been clearly intended by Congress since 1965," *id.* at 232 (alteration in original) (quoting S. Rep. No. 97-417, at 30 (1982)), while Justice Breyer, writing for himself and two other Justices, stated that "Congress intended to establish a private right of action to enforce § 10, no less than it did to enforce §§ 2 and 5," *id.* at 240. Here, however, the Eighth Circuit rejected this Court's explicit recognition of a private right of action under Section 2, as well as the numerous cases brought by private plaintiffs under the Voting Rights Act. *See infra pp.* 10-15.

Finally, the Eighth Circuit's ruling would undermine the right to vote for millions of Americans. With the Department of Justice unable to shoulder the entire burden of enforcement, not only Native communities but all minority groups would be stripped of protection against barriers to equal electoral participa-

tion. Neither the Voting Rights Act, nor Section 1983, demand such a perverse result, and this Court should review the Eighth Circuit's holding to the contrary.

ARGUMENT

I. THE EIGHTH CIRCUIT'S RULING CONFLICTS WITH THIS COURT'S LONGSTANDING APPROACH TO INTERPRETING SECTION 1983 AND THE VRA.

The Eighth Circuit's ruling that "the plaintiffs do not have a cause of action under 42 U.S.C. § 1983 to enforce § 2 of the [Voting Rights] Act" conflicts with this Court's instruction to interpret these statutes by giving due weight to legislative intent and historical context. *See Gonzaga*, 536 U.S. at 283 ("[W]e must first determine whether Congress *intended to create a federal right*.").

1. In the wake of the Civil War, Congress "fundamentally altered our country's federal system" by adopting a series of constitutional amendments. *McDonald v. City of Chicago*, 561 U.S. 742, 754 (2010). Among other things, those amendments abolished slavery, U.S. Const. amend. XIII, extended the Due Process Clause to the states and guaranteed equal protection under the law, U.S. Const. amend. XIV, and prohibited government actors from denying citizens the right to vote "on account of race, color, or previous condition of servitude," U.S. Const. amend. XV. Crucially, each of these amendments also gave Congress the "power to enforce" their provisions "by appropriate legislation." U.S. Const. amends. XIII, XIV, XV.

Congress soon found it necessary to exercise that power: "In early 1871, a Senate Select Committee pro-

duced and distributed a Report that ran hundreds of pages and recounted pervasive state-sanctioned lawlessness and violence against the freedmen and their White Republican allies." *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 176 (2023) (citing *Monroe v. Pape*, 365 U.S. 167, 174 (1961)).

Congress responded by passing the Civil Rights Act of 1871, the first section of which "created the federal cause of action now codified as § 1983." *Talevski*, 599 U.S. at 177 (citing *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 608 & n.16 (1979)). In its current form, Section 1983 provides that "[e]very person who," under color of law, deprives another of "any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 42 U.S.C. § 1983.

By the turn of the twentieth century, the statute gradually began to be used "to redress violations of the voting rights" of Black Americans. Marshall S. Shapo, *Constitutional Tort:* Monroe v. Pape *and the Frontiers Beyond*, 60 Nw. U. L. Rev. 277, 282 (1965). Those efforts culminated in this Court's decision in *Monroe v. Pape*, in which the Court recognized a private cause of action against state actors who abused their authority or were otherwise acting in violation of state law. 365 U.S. at 183-87.

Since then, this Court has consistently concluded that Section 1983 provides a cause of action to remedy violations of rights secured by federal law, regardless of whether those rights are enumerated in the Constitution or found in some other source of federal law. *See, e.g.*, *Talevski*, 599 U.S. at 177 ("[W]e have consist-

ently refused to read § 1983's 'plain language' to mean anything other than what it says." (citation omitted)); *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980) ("Given that Congress attached no modifiers to the phrase, the plain language of the statute undoubtedly embraces respondents' claim that petitioners violated the Social Security Act.")). As this Court has repeatedly explained, a right is "secured by" federal law as long as it "unambiguously confer[s] individual rights upon a class of beneficiaries," and Congress did not manifest an intent to make Section 1983 unavailable. *Talevski*, 599 U.S. at 183.

2. Amidst the advocacy and activism of the 1960s and the Civil Rights Movement, Congress once again chose to take up the fight against racial injustice by drafting and passing the Voting Rights Act of 1965 ("VRA").

Congress has emphasized the importance of the statute's historical underpinnings in understanding its scope and intended reach. *See* S. Rep. No. 97-417, at 5 (declaring, in the context of the 1982 amendments to the VRA, that "an understanding of [the statute's] history is essential").

As the Senate stated in its report accompanying the 1982 amendments to the VRA, "[t]raditionally, Black Americans were denied the franchise throughout the South." *Id*. While the era of Reconstruction, which resulted in the passage of the Fourteenth and Fifteenth Amendments in 1868 and 1870, offered glimmers of hope following the end of slavery, that hope was short lived. Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* 181-82 (2009). By 1875, contemporane-

ous commentators were already calling the Fourteenth and Fifteenth Amendments "dead letters." *Id.* at 182. After that brief period of progress, the following decades were marked by the denial of voting rights through "violence" and "harassment." S. Rep. No. 97-417, at 5.

It was this history that led to the passage of the VRA. Like Section 1983, the VRA was explicitly enacted to protect the rights of Black Americans by giving teeth to the Fifteenth Amendment. Keyssar, *supra*, at 406 (the "essence" of the VRA "was simply an effort to enforce the Fifteenth Amendment, which had been law for almost a century"); *United States v. Bd. of Comm'rs*, 435 U.S. 110, 126-27 (1978) ("The Act, of course, is designed to implement the Fifteenth Amendment and, in some respects, the Fourteenth Amendment." (citations omitted)). And like Section 1983, since the passage of the VRA, its scope has expanded to safeguard voting rights of other historically disenfranchised groups. *See, e.g.*, *Allen v. Milligan*, 599 U.S. 1, 11-14 (2023) (describing how Congress broadened Section 2 of the VRA in 1982 in response to this Court's decision in *City of Mobile v. Bolden*, 446 U.S. 55 (1980)).

Moreover, the legislative history unambiguously demonstrates that Congress not only intended that the VRA would be interpreted consistent with its historical underpinnings, but also that Section 2 would be enforced through a private right of action. As the Senate report for the 1982 amendments stated: "[T]he Committee reiterates the existence of the private right of action under Section 2, *as has been clearly intended by Congress since 1965*." S. Rep. No. 97-417, at 30 (emphasis added) (citing *Allen v. Bd. of Elections*,

393 U.S. 544 (1969)); *see also* H. Rep. No. 97-227, at 32 (1982) (same).

3. The Eighth Circuit's conclusion that Section 2 does not evince Congress's "unambiguous intent to confer individual rights" is at odds with these legislative directives and conflicts with the precedents interpreting them. *Turtle Mountain Band of Chippewa Indians*, 137 F.4th at 720-21. Although the panel examined the text of Section 2, homing in on Section 2's "focus" on "State[s] or political subdivision[s]" and its prohibition of specific actions rather than a "conferral of a right" to "any citizen," *see id.*, it paid short shrift to the history of Section 2—declaring without analysis that "§ 2's historical background suggests that the 'right of any citizen' in § 2 merely parrots a preexisting right guaranteed by the Fifteenth Amendment"—and failed to acknowledge Congress's own expressions of its intent to grant a private right of action to individuals under Section 2. *See id.* (citation omitted).

This Court has stated that "[w]henever we determine the scope of rights and remedies under a federal statute, the critical factor is the congressional intent behind the particular provision at issue." *Jackson Transit Auth. v. Loc. Div. 1285, Amalgamated Transit Union, AFL-CIO-CLC,* 457 U.S. 15, 22 (1982). And under this Court's ruling in *Gonzaga*, the Eighth Circuit was *required* to examine the legislature's intent to determine whether the VRA provides a private right of action. 536 U.S. at 283; *Thornburg v. Gingles*, 478 U.S. 30, 79 (1986) (stating that the legislative history of Section 2 "provide[s] legal standards which a court must apply to the facts to determine whether § 2 has been violated"). Had the Eighth Circuit done so, it would have had no choice but to conclude that Con-

gress intended Section 2 to confer a private right of action on U.S. citizens.

II. THE EIGHTH CIRCUIT'S RULING CONFLICTS WITH DECADES OF SETTLED PRECEDENT INTERPRETING SECTION 1983 AND THE VRA.

Even setting aside the legislative intent and historical context discussed above, this Court and the lower courts have repeatedly recognized an implied private right of action to enforce Section 2, either through the VRA itself, or through Section 1983. *E.g.*, *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 537 (2013) ("Both the Federal Government *and* individuals have sued to enforce § 2 [of the Voting Rights Act of 1965]." (emphasis added)). With this understanding, private plaintiffs have, for decades, filed hundreds of Section 2 cases. Every VRA case decided by this Court since 1982 was brought by private plaintiffs, along with a plethora of cases in every circuit. And multiple decisions by this Court, not to mention the courts of appeals and district courts, explicitly recognize an implied private right of action, whether under Section 2 itself or Section 1983. At no point has Congress attempted to amend the VRA to eliminate a private right of action; to the contrary, it endorsed such a right when amending Section 2 in 1982. *See supra* at pp. 8-9. Against this backdrop, the Eighth Circuit's elimination of *any* private means of enforcing the VRA conflicts with decisions of this Court and other circuits and calls out for this Court's review.

1. Since 1982, when Section 2 was amended, private plaintiffs have brought over 1,300 Section 2 chal-

lenges in court, which represents over 90% of all Section 2 challenges in the last 43 years. Christopher B. Seaman, *Voting Rights and Private Rights of Action: An Empirical Study of Litigation Under Section 2 of the Voting Rights Act, 1982–2024*, Fl. State Univ. L. Rev. (forthcoming) (manuscript at 49) (available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5386558). By contrast, the Attorney General has brought 114 cases—less than 8% of all Section 2 cases during that same period. *Id*. Those statistics have remained steady over the decades, meaning private plaintiffs have consistently been bringing the overwhelming majority of Section 2 challenges in the last four decades, without jurisdictional challenge or question. *See id.* at 49-50 fig. 4, 52 (private plaintiffs brought the vast majority of Section 2 challenges, ranging from 83% during the 2000s to 90% in the 2010s, and were responsible for nearly 90% of wins between 1982 and 2024).

These figures reflect the fact that this Court, and many courts of appeals, have either expressly recognized or assumed a private right of action, whether under Section 2 itself or via Section 1983.

2. A majority of this Court recognized an implied private right of action under the VRA in *Morse v. Republican Party of Virginia*, where five Justices affirmed that Section 10 of the VRA provides for an implied private right of action, and confirmed in the process that Section 2 does as well. Justice Stevens, writing for himself and Justice Ginsburg, noted that "'the existence of a private right of action under Section 2 . . . has been clearly intended by Congress since 1965,'" 517 U.S. at 232 (quoting S. Rep. No. 97-417, at 30), while Justice Breyer, writing for himself and two

other Justices, affirmed that "Congress intended to establish a private right of action to enforce § 10, no less than it did to enforce §§ 2 and 5," *id.* at 240. As Justice Stevens explained, Section 10 is (like Section 2) "a statute designed for enforcement of the guarantees of the Fourteenth and Fifteenth Amendments," so "Congress must have intended it to provide remedies." *Id.* at 233-34. Earlier, in *Allen v. State Board of Elections*, the Court recognized that the VRA "was drafted to make the guarantees of the Fifteenth Amendment finally a reality for all citizens," and that this goal "might well prove an empty promise unless the private citizen were allowed to seek judicial enforcement of the prohibition." 393 U.S. 554, 556-57 (1969).

In addition to this Court's express statements regarding the ability of private plaintiffs to enforce the VRA's provisions, the Court has implicitly recognized such a right by ruling on the merits in numerous cases brought by such plaintiffs. These cases have also recognized that, just like Section 1983, the VRA was passed to protect the rights guaranteed by the Reconstruction Amendments. In *Allen v. Milligan*, for example, the Court traced the history of the VRA as a means of fulfilling the promise of the Fifteenth Amendment. 599 U.S. at 10, 25. And two years earlier, in *Brnovich v. Democratic National Committee*, the Court described how the VRA was enacted "in an effort to achieve at long last what the Fifteenth Amendment had sought to bring about 95 years earlier: an end to the denial of the right to vote based on race." 594 U.S. 647, 655 (2021). With these cases, this Court has confirmed the settled understanding that private suits are not only permitted, but necessary to effectuate Congress's intent.

The other courts of appeals to have considered this question have uniformly found a private right of action within Section 2 itself. The Eighth Circuit's decision in *Arkansas State Conference NAACP* is an outlier. In *Robinson v. Ardoin*, the Fifth Circuit noted that the VRA "provides that proceedings to enforce voting guarantees in any state or political subdivision can be brought by the Attorney General or by an 'aggrieved person.'" 86 F.4th 574, 588 (5th Cir. 2023) (quoting 52 U.S.C. § 10302). The Eleventh Circuit carefully examined the issue in *Alabama State Conference of NAACP v. Alabama*, concluding that in the VRA, Congress "unmistakably" "intended to subject States to liability by private parties." 949 F.3d 647, 654 (11th Cir. 2020), *vacated as moot*, 141 S. Ct. 2618 (2021). The court explained that the VRA "clearly expresses an intent to allow private parties to sue the States," and that "[t]he language of § 2 and § 3, read together . . . explicitly provides remedies to private parties to address violations under the statute." *Id.* at 652. Finally, the Sixth Circuit has also recognized that "[a]n individual may bring a private cause of action under Section 2 of the Voting Rights Act." *Mixon v. Ohio*, 193 F.3d 389, 406 (6th Cir. 1999).

Alongside these cases explicitly finding a private right of action, there are numerous VRA cases—in every circuit—brought by private plaintiffs that are premised on the assumption that such a right of action exists. Pet. 21 n.8 (collecting cases). In each of these cases, the court did not dispute the basic principle that a private plaintiff could bring suit to enforce Section 2, and proceeded to resolve the case on the merits. These cases recognize, as this Court has, that "the Voting Rights Act fulfills the promise of the Fifteenth

Amendment—that no citizen shall be denied the right to vote based on race, color, or previous condition of servitude." *Clerveaux v. East Ramapo Cent. Sch. Dist.*, 984 F.3d 213, 219 (2d Cir. 2021) (cleaned up) (case brought under implied Section 2 right of action).

3. The Eleventh Circuit has also concluded, contrary to the Eighth Circuit, that Section 1983 provides a private cause of action to pursue claims under the VRA, separate from an implied right of action in Section 2 itself. After analyzing the statute's legislative history and finding "an intense focus on protecting the right to vote" but "[n]othing" to suggest that Congress "intended . . . to foreclose the continued use of § 1983 by individuals," the Eleventh Circuit held that "the Voting Rights Act may be enforced by a private right of action under § 1983." *Schwier v. Cox*, 340 F.3d 1284, 1295, 1297 (11th Cir. 2003). The Eleventh Circuit's ruling is also consistent with decisions in two other circuits holding that a separate provision of the Civil Rights Act protecting the right to vote, 52 U.S.C. § 10101, may be enforced via Section 1983. *See Vote.Org v. Callanen*, 89 F.4th 459, 478 (5th Cir. 2023) ("We conclude that private enforcement via Section 1983 does not thwart Congress's enforcement scheme. Vote.org can seek a remedy . . . by way of Section 1983"); *Migliori v. Cohen*, 36 F.4th 153, 162 (3d Cir. 2022) ("We therefore hold that private plaintiffs may enforce the Materiality Provision via § 1983, and the District Court erred in finding that Voters have no right of action."), *vacated as moot sub nom. Ritter v. Migliori*, 143 S. Ct. 197 (2022).

In addition, multiple decisions from three-judge district courts have concluded that Section 2 may be enforced via a private right of action, whether under

Section 2 itself or Section 1983. Pet. 20 n.7 (collecting cases). For example, after conducting a comprehensive analysis based on the text of the statute, Congressional action, and precedent, one court concluded that private plaintiffs may enforce Section 2 "either through an implied private right of action, Section 1983, or both." *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1322 (N.D. Ala. 2025). As the court put it: "It is difficult in the extreme for us to believe that for nearly sixty years, federal courts have consistently misunderstood one of the most important sections of one of the most important civil rights statutes in American history, and that Congress has steadfastly refused to correct our apparent error." *Id.*

These precedents confirm that the Eighth Circuit's decision, which cuts off *any* possibility of private enforcement of the VRA, is wrong on the history and wrong on the law. The circuit split must be resolved in favor of those circuits that have affirmed plaintiffs' ability to sue to enforce the VRA, reflecting the longstanding practice of courts throughout the country and faithfully interpreting the precedents of this Court.

III. THE CASE PRESENTS AN ISSUE OF EXCEPTIONAL IMPORTANCE, WHICH WILL HAVE GRAVE RAMIFICATIONS FOR MILLIONS OF VOTERS.

The Eighth Circuit's ruling risks profound consequences. By disabling the primary enforcement mechanism of Section 2, the decision effectively extinguishes the ability of millions of Americans to vindicate their voting rights.

The Department of Justice alone cannot shoulder the immense burden of nationwide enforcement of the

VRA. Indeed, in the years immediately preceding the VRA, Congress "repeatedly tried to cope with the problem" of voting discrimination "by facilitating case-by-case litigation" brought by the Attorney General. *See Katzenbach v. South Carolina*, 383 U.S. 301, 313 (1966) (the Civil Rights Act of 1957, amendments to the Civil Rights Act of 1960, and Title I of the Civil Rights Act of 1964 all aimed to improve the Department of Justice's voting discrimination enforcement capabilities). Yet, in passing the VRA, Congress found this approach to be "inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits." *Id.* at 328 (citation omitted).

Rather, it was (and is) necessary to empower Americans to personally and directly challenge discriminatory practices. Without a private right of action, Native communities, including the Turtle Mountain Band of Chippewa Indians, would be stripped of protection against entrenched and systemic barriers to equal electoral participation, ranging from gerrymandered district lines to the closure of accessible polling sites. Private enforcement actions under Section 2 have been the critical vehicle for addressing these harms. For example, in *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976 (D.S.D. 2004), Native voters successfully challenged South Dakota's redistricting plan that diluted their political power—an action brought by private plaintiffs, not the federal government. Were the Eighth Circuit's ruling to stand, communities like Turtle Mountain would be left with no practical means of vindicating their rights.

The decision also creates a worrisome inconsistency across jurisdictions. Within the Eighth Circuit, minority voters would be uniquely barred from bringing Section 2 claims, while voters in other circuits would continue to enjoy this protection. Such a fractured regime undermines the VRA's core promise of uniform, nationwide safeguards against racial discrimination in voting. It also conflicts with this Court's longstanding recognition that the right to vote is "preservative of all rights" and must be protected with the closest scrutiny. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). By insulating discriminatory electoral practices from challenge in large swaths of the country, the Eighth Circuit's ruling threatens to hollow out the VRA at precisely the moment when the right to vote faces renewed challenges. *See Voting Laws Roundup: 2024 in Review*, BRENNAN CENTER FOR JUSTICE (Jan. 15, 2025), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-2024-review (at least 30 states have enacted 79 restrictive laws since 2021).

For these reasons, it is imperative for this Court to intervene. The Eighth Circuit's ruling has the potential to dismantle the principal enforcement mechanism of the nation's most important civil rights statute. To preserve both the integrity of the Voting Rights Act and the uniformity of federal voting rights protections, this Court should grant review.

CONCLUSION

The Eighth Circuit's unprecedented holding cutting off *any* possibility of private enforcement of Section 2 of the VRA clashes with this Court's longstanding approach to both Section 1983 and the VRA. If left

undisturbed, the Eighth Circuit's decision will gut a crucial and deeply rooted civil rights protection. The petition should be granted.

Respectfully submitted.

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