No. 25-253

IN THE

Supreme Court of the United States

TURTLE MOUNTAIN BAND
OF CHIPPEWA INDIANS, *et al.*,

Petitioners,

v.

MICHAEL HOWE, 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 AMICI CURIAE STATES OF MINNESOTA, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON, RHODE ISLAND, VERMONT, WASHINGTON, AND WISCONSIN AND THE DISTRICT OF COLUMBIA IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, is enforceable by private plaintiffs through 42 U.S.C. § 1983, an implied right of action, or both.

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INTERESTS OF AMICI STATES[1]

For nearly 60 years, private parties have enforced Section 2 of the Voting Rights Act (VRA), "the most successful civil rights statute in the history of the Nation." *Allen v. Milligan*, 599 U.S. 1, 10 (2023) (quoting S. Rep. No. 97-417, at 111 (1982)). But in a series of outlier decisions, the Eighth Circuit created a stark circuit split, contravened this Court's precedents, and upended decades of settled law by holding that private parties cannot enforce Section 2, either through 42 U.S.C. § 1983 or an implied right of action. App. 17a-27a (Section 1983); *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204, 1208-17 (8th Cir. 2023) (implied right of action). Because the Eighth Circuit's decision departs from the decisions of essentially every other court to consider Section 2's private enforceability and threatens citizens' right to vote, amici curiae States of Minnesota, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin and the District of Columbia, urge the Court to grant certiorari.

The amici states bring a unique perspective to bear on these issues. The amici states have a strong interest in protecting their citizens' right to vote. And they also know firsthand that government resources are limited, and that private parties are essential to Section 2 enforcement. These private enforcement efforts have helped shape state and local redistricting. They also assist the amici states

1. All counsel of record received timely notice of the amici states' intent to file this amicus brief under Rule 37.2.

by ensuring that their electoral processes are free from racial discrimination and other voting inequities.

The amici states also have a strong interest in the proper interpretation of Section 1983 because they often defend against those claims. The amici states agree that federal statutes do not always, or even often, create rights enforceable through Section 1983. That is especially true for statutes enacted under the Spending Clause. But Section 2 is not Spending Clause legislation. It is civil-rights legislation enacted to enforce the Fourteenth and Fifteenth Amendments—two crowning achievements of the Reconstruction era. Without private enforcement, millions of voters will not fully benefit from Section 2's robust protection of the Reconstruction Amendments.

More fundamentally, if private enforcement withers, the amici states will be harmed because they are committed to ending racial discrimination in voting. After the Court invalidated the VRA's preclearance requirement in *Shelby County v. Holder*, 570 U.S. 529 (2013), Section 2 is more important than ever in ensuring our democracy moves closer to that goal. The right to vote is "the essence of a democratic society." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). But in recent years, trust in elections has slid, and trust in government has dropped closer to all-time lows.[2] Giving the U.S. Attorney General sole power to enforce Section 2 will lead to a decline in enforcement, whether because of shifting priorities or resource constraints, undermining both the VRA and trust in our elections.

2. Michael Caudell-Feagan, *How to Restore Trust in Elections*, Trend Mag. (Oct. 17, 2024), https://perma.cc/ER76-L338; Pew Rsch. Ctr., *Public Trust in Government: 1958-2024*, (June 24, 2024), https://perma.cc/D4HV-DXHU.

Section 2 is best protected by ensuring that those with the greatest stake—voters—can enforce it.

The amici states thus ask the Court to grant the petition for a writ of certiorari.

SUMMARY OF THE ARGUMENT

This Court should review the Eighth Circuit's decision in this exceptionally important case for two main reasons:

1. The Eighth Circuit's decision threatens private enforcement of Section 2 of the VRA, which imposes a "nationwide ban on racial discrimination in voting." *Shelby Cnty.*, 570 U.S. at 557. For decades, private parties have been at the forefront of enforcing Section 2 as Congress clearly intended, providing the impetus for hundreds of reported decisions by federal courts, as well as the key decisions by this Court interpreting that provision. *See, e.g.*, *Allen*, 599 U.S. 1; *Thornburg v. Gingles*, 478 U.S. 30 (1986); *City of Mobile v. Bolden*, 446 U.S. 55 (1980). The Eighth Circuit's decision here eliminated voters' ability to enforce Section 2 in seven states and threatens to undermine that ability nationwide, making voters' rights under Section 2 depend on the enforcement prerogatives of a federal government that has been responsible for a tiny fraction of Section 2 enforcement efforts to date. This decision upends decades of practice and undercuts the statutory scheme Congress designed.

If the Eighth Circuit's decision is left undisturbed, voters will suffer. Private enforcement of Section 2 is a necessary supplement to federal and state efforts to ensure that voting rights are protected. Although private

enforcement imposes some costs on the states (and local governments) that defend against such claims, the states are adept at defeating meritless Section 2 claims. And, in any event, the costs associated with Section 2 defense are dwarfed by the benefit to states of ensuring that their citizens' fundamental right to vote is protected.

2. Certiorari is also necessary because the Eighth Circuit departed from this Court's precedent, creating a sharp split with three circuits and many federal district courts. The Eighth Circuit stands alone in holding that Section 2 is not privately enforceable, either through Section 1983 or an implied right of action. In reaching that conclusion, the Eighth Circuit misunderstood (or ignored) key precedents, and adopted a reading of the VRA that cannot be squared with its text, structure, or history. The Court should grant certiorari.

ARGUMENT

I. Private Enforcement of the VRA Is Necessary for Voters and States.

The Court should grant certiorari because this case presents critically important questions about who can enforce voting rights. Sup. Ct. R. 10(c). The significance of the right to vote cannot be overstated: it is a fundamental right that preserves all other rights. *Reynolds*, 377 U.S. at 561-62. Restricting voters' ability to vote for candidates of their choice "strike[s] at the heart of representative government." *Id.* at 555.

Congress has recognized that the United States has long struggled to protect the fundamental right to vote.

Before Congress passed the VRA in 1965, voting rights that existed on paper were, in practice, illusory. *Allen*, 599 U.S. at 10. For decades, states and local governments undermined the Fifteenth Amendment by infecting the electoral process with racial discrimination. *Id.*; *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966). The federal government's attempts to address these persistent practices through case-by-case litigation under predecessor laws were ineffective. S. Rep. No. 94-295, at 11-12 (1975); Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* 260 (2000); 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*, Fla. St. U. L. Rev. (forthcoming) (manuscript at 28 & nn. 26-30, 186) (on file with authors). Congress responded by enacting the VRA to ensure that voting rights are meaningful and enforceable. *Allen*, 599 U.S. at 10.

Section 2 is one of the VRA's pillars. It imposes a nationwide prohibition on standards, practices, or procedures that result in the denial or abridgement of the right to vote based on race, color, or membership in a language-minority group. 52 U.S.C. §§ 10301, 10303(e)-(f). The VRA prohibits both discriminatory intent and impact, protecting voters' opportunity to participate in the political process "in a reliable and meaningful manner." *Allen*, 599 U.S. at 25 (quotation omitted).

The VRA quickly became "the most successful civil rights statute" in the nation's history. S. Rep. No. 97-417, at 111; *Allen,* 599 U.S. at 10. Within five years of enactment, Black voter registration in southern states spiked by more than 50 percent. Charles S. Bullock III, Ronald

Keith Gaddie & Justin J. Wert, *The Rise and Fall of the Voting Rights Act* 22-23 (2016). And the VRA achieved and preserved such gains over the past 60 years at least in part because of private-party lawsuits.

The Eighth Circuit has now stripped private parties in seven states of their ability to enforce their voting rights. The Eighth Circuit first held that Section 2 does not provide an implied right of action. *Ark. NAACP*, 86 F.4th at 1210-17. Then, in the decision below, it built on its reasoning in *Arkansas NAACP* to hold that voters cannot enforce Section 2 through 42 U.S.C. § 1983.[3] App. 17a-27a. Combined, the decisions leave voters in the Eighth Circuit dependent on the U.S. Attorney General to enforce their Section 2 rights.

This seismic shift in the ability to enforce voting rights warrants certiorari. For the reasons identified below and by the petitioners, the Eighth Circuit's reasoning conflicts with other circuits and with this Court's precedent. And the Eighth Circuit's holding profoundly harms the public interest. Vesting Section 2 enforcement authority in a single federal officer—regardless of which party happens to be in power—is inadequate and will lead to radical underenforcement of voting rights. A private cause of action—whether through Section 1983 or directly under the VRA—is critical to the congressional purpose in enacting and amending the VRA. A private cause of

3. The Eighth Circuit has used these holdings to keep weakening the VRA. For example, it recently concluded that § 208—which provides voter-assistance rights—has no private remedy. *Ark. United v. Thurston*, 146 F.4th 673, 677-78 (8th Cir. 2025). That case highlights the domino effect caused by the conclusion that Section 2 cannot be privately enforced.

action allows for more effective enforcement by balancing resources between public and private parties, and ensures the accountability that the VRA intended.

A. Government Resource Constraints Make Private Enforcement of Section 2 Vital.

While federal enforcement authority is important, private enforcement is the linchpin to ensuring that the VRA's protections are a reality for all voters. Voting links citizens to their laws and government, and voting rights are endangered when the very voters whose fundamental rights are at stake cannot enforce them. *Evans v. Cornman*, 398 U.S. 419, 422 (1970). Private enforcement has been critical in making the VRA "the most successful civil rights statute" to date, *Allen*, 599 U.S. at 10, and it is vital to ensuring the VRA's continued success in protecting voting rights. As this Court recognized more than fifty years ago, achieving the VRA's "laudable goal could be severely hampered" if every citizen must depend on litigation started only at the Attorney General's discretion. *Allen v. State Bd. of Elections*, 393 U.S. 544, 556 (1969).

Private enforcement has been the backbone of VRA enforcement. Nationally, private plaintiffs brought approximately 91% (1379 of 1519) of all Section 2 challenges between 1982 and 2024. Seaman (manuscript at 49); Ellen D. Katz, *Curbing Private Enforcement of the Voting Rights Act: Thoughts on Recent Developments*, 123 Mich. L. Rev. Online 23, 34 (2024); U.S. Comm'n on C.R., *An Assessment of Minority Voting Rights Access in the United States* 243, 250, 286 (2018). In the same timeframe, by contrast, the U.S. Attorney General independently

brought only 7.5% of all Section 2 challenges (114 cases total, or less than three per year). Seaman (manuscript at 49, 53). Section 2 enforcement cases in the Eighth Circuit reflect these national trends: during the same timeframe, the U.S. Attorney General brought only 5 cases in Eighth Circuit jurisdictions, while private plaintiffs brought 88. Christopher B. Seaman, Datasets, https://christopherbseaman.com/datasets/ (last accessed Sept. 30, 2025); U.S. Dep't of Just., *Voting Section Litigation*, https://perma.cc/WL9V-8E3M.

Private plaintiffs have not only driven Section 2 litigation, they have been critical in realizing the VRA's promise. Private plaintiffs succeeded in more than two-thirds of their cases. Seaman (manuscript at 51). Indeed, private plaintiffs brought many of the pathbreaking VRA cases that helped establish this Court's voting-rights jurisprudence. *E.g.*, *Gingles*, 478 U.S. at 35. Moreover, while some types of Section 2 cases may be harder to prove today, private plaintiffs still prevail, demonstrating that private enforcement remains necessary to protect voting rights. *E.g.*, App. 115a-16a; *Allen*, 599 U.S. at 1920 (affirming violation); *Nairne v. Landry*, No. 24-30115, 2025 WL 2355524, at *22 (5th Cir. 2025) (affirming violation); U.S. Comm'n on C.R., *Assessment of Minority Voting Rights*, at 267, 281 (recognizing "overall trend of discrimination in voting continuing during recent years").

Private enforcement of the VRA is critical because private plaintiffs are best suited to vindicate their own voting rights. Their opportunity to do so should not depend on government resources, priorities, or discretion. Even in the best circumstances, the U.S. Attorney General lacks the resources to monitor, investigate, and prosecute voting-

rights violations in every federal, state, and local voting district. *Allen*, 393 U.S. at 556-57. The Supreme Court and the federal government therefore expect private parties to assist. *E.g.*, *NAACP v. New York*, 413 U.S. 345, 367 (1973) (explaining that it was "incumbent" upon NAACP to assist U.S. Department of Justice with investigating literacy-test action). For example, private enforcement has been particularly important in challenging redistricting maps that dilute votes, as happened here. The government does not have the resources to bring all meritorious vote-dilution cases, particularly because such cases are long and fact-intensive, require numerous experts, and often involve multiple appeals. *E.g.*, App. 10a-12a, 63a, 73a-74a (reflecting procedural history and trial evidence); Seaman (manuscript at 52-53 & nn. 276-77). Private parties whose voting rights are at stake are strongly incentivized to find the resources to bring such cases. And they also often have extensive on-the-ground knowledge and develop the necessary connections with stakeholders and community members to build cases.

In the amici states' experience, dual enforcement regimes can be critical to statutory enforcement. Just as various demands may pull the U.S. Attorney General in multiple directions, state officials face limited resources and authority to combat unlawful practices in other contexts. When government resources are limited, and when the relevant statute permits private enforcement, private parties can be instrumental in identifying voting-related violations. And, for decades, private actions have been a welcome and necessary supplement to state efforts to ensure legal compliance with voting rights laws. *See* Justin Weinstein-Tull, *Abdication and Federalism*, 117 Colum. L. Rev. 839, 860-61 (2017) (discussing difficulties of securing local officials' compliance with election law).

Private enforcement of Section 2 has become particularly important given the demise of preclearance. When the Court invalidated Section 4(b)'s coverage formula for preclearance in *Shelby County*, it stressed that its decision did not affect Section 2. 570 U.S. at 557. And the Court emphasized that "[b]oth the Federal government and individuals have sued to enforce § 2." *Id.* at 537. Eliminating the private enforceability of Section 2 would undermine these reassurances and remove an important protection against voting discrimination that underpinned the Court's conclusion that Section 4(b)'s formula was no longer necessary.

Finally, limiting private enforcement authority is particularly problematic in the election context. Elections occur on regular schedules—at least every two years in the amici states. Election-related claims often require fast initial resolution—through preliminary injunctions or remedial orders—to provide certainty for the next election. Because prompt resolution is essential, it is not feasible for individuals whose rights have been trampled to report violations to the federal government and simply wait. Violations that the U.S. Attorney General lacks the time, capacity, or inclination to address will go unchecked and leave voters without redress. Private enforcement ensures that those with the largest stake—voters—can protect their own rights. Because of these and the other practical realities outlined above, private parties have rightly emerged as leaders in enforcing Section 2.

B. Private Enforcement Ensures Accountability for Government Officials and Checks Partisan Abuse of Federal Power.

This case also merits review because foreclosing private enforcement limits voters' ability to hold elected officials accountable for racially discriminatory election practices. Private enforcement limits opportunities for partisan abuse, ensures that the VRA can be enforced when violations occur, and deters discriminatory voting practices. And while private enforcement may create some burdens on states who are defendants, those burdens are minimal relative to the VRA's purpose and the guarantees of the Fifteenth Amendment.

First, foreclosing private enforcement is at odds with the VRA's clear purpose: prohibiting discrimination in voting on a nationwide basis. Beyond the resource constraints discussed above, election officials may face political incentives or disincentives to act. For example, an official may face pressure not to vigorously pursue cases if affected voters are more likely to support a political opponent. Being free from discriminatory voting practices should not be subject to discretionary decision-making about whether to enforce the VRA or resource constraints. The right to be free from discriminatory voting practices should be just that: a right to be free from discriminatory voting practices. Federal administrations have varied dramatically in how often they bring enforcement actions, and private actions have significantly outpaced every administration's actions. Seaman (manuscript at 50-51).

Second, private enforcement helps ensure that elected officials remedy VRA violations. Early enforcement of the

Fifteenth Amendment has been "regarded as a failure" in part because such laws depended on individual lawsuits filed by the Department of Justice. *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 197 (2009). Indeed, without a meaningful risk of enforcement, some officials may have less incentive to comply with Section 2. *See, e.g.*, Christopher S. Elmendorf & Douglas M. Spencer, *Administering Section 2 of the Voting Rights Act After* Shelby County, 115 Colum. L. Rev. 2143, 2145-46 (2015) (noting that after *Shelby County*, "[a] number of states that had been subject to the preclearance process quickly adopted or implemented new, restrictive voting laws"). Given the heightened role that Section 2 must now play in combatting discriminatory voting practices, eliminating private enforcement of Section 2 risks leaving millions without recourse against a rise in discriminatory practices.

Third, private enforcement does not disrupt principles of federalism or the balance between federal and state powers, as some other states have suggested. Br. of Alabama et al., *Turtle Mountain Band of Chippewa Indians v. Howe*, 137 F.4th 710 (8th Cir. 2025), 2024 WL 645964, at *16-17. Rather, the Constitution authorizes Congress to enact broad remedies to enforce the Reconstruction Amendments and protect voting rights, limiting the power of the states and enlarging the power of Congress as a result. U.S. Const. amend. XV, § 2. Congress enacted the VRA using that authority. *Katzenbach*, 383 U.S. at 325-26. The availability of a private remedy therefore reflects a lawful decision by Congress.

To the extent that states are defendants in private Section 2 actions, states know how to defend against

unwarranted Section 2 claims.[4] Claims against states are typically less successful than those against local governments. Ellen D. Katz, et al., *To Participate and Elect: Section 2 of the Voting Rights Act Since 1982*, Univ. Mich. L. Sch. Voting Rights Initiative (2025), https://voting.law.umich.edu (finding that private plaintiffs succeeded in 29% of cases against state defendants, compared to 51% against local-government defendants). Moreover, the burden of being a Section 2 defendant pales in comparison to the need for the robust protection of voting rights that the VRA provides.

For these reasons, this case presents exceptionally important questions. Voters in the Eighth Circuit should be able to independently enforce their own VRA rights just like voters in every other circuit. The Court should grant certiorari.

II. This Court Should Grant Certiorari Because the Eighth Circuit's Decision Creates a Circuit Split and Conflicts with Two Lines of This Court's Precedent.

Certiorari is also appropriate because the Eighth Circuit created a sharp and lopsided circuit split on private enforcement of Section 2. The petition explains why the Eighth Circuit's decision is an outlier and wrong. Pet. 18-39.

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4. And when a private plaintiff identifies an actual VRA violation, private enforcement provides an opportunity for states or local governments to course correct. For example, when private plaintiffs used litigation to identify a conflict between the VRA and Minnesota's law on voter assistance, the state settled the case and brought state law into compliance. Consent Decree, *Thao v. Simon*, No. 62-cv-20-1044 (filed Apr. 21, 2020).

The amici states write separately to highlight the most glaring errors in the Eighth Circuit's decision, and how it conflicts with this Court's precedents on Section 1983, implied rights of action, and decades of settled law. Sup. Ct. R. 10(a), (c).

A. The Eighth Circuit's Decision Conflicts with Section 1983 Precedent.

The Eighth Circuit's decision conflicts with this Court's Section 1983 precedents in two fundamental ways. First, contrary to the Eighth Circuit's reasoning, the Spending Clause-focused framework from *Gonzaga University v. Doe*, 536 U.S. 273 (2002), does not extend to Reconstruction Amendment enforcement statutes like the VRA. Second, even if the *Gonzaga* framework applies, the Eighth Circuit contravened this Court's recent decision in *Health & Hospital Corp. of Marion County v. Talevski*, 599 U.S. 166 (2023). Certiorari is thus warranted.

1. The Eighth Circuit incorrectly applied *Gonzaga* to the VRA.

The Eighth Circuit erred in assuming that *Gonzaga*'s framework applies to legislation enacted under the Reconstruction Amendments. App. 26a-27a. Under *Gonzaga*, federal spending legislation must unambiguously confer an individual right to be enforceable under Section 1983. 536 U.S. at 282-83. This requirement is rooted in contract and federalism principles unique to federal spending legislation. It is ill-suited for Section 2 of the VRA.

Gonzaga held that a private party could not enforce provisions of the Family Educational Rights and Privacy

Act of 1974 (FERPA) under Section 1983. *Id.* at 290. The Court explained that federal statutes do not automatically confer enforceable federal "rights," and emphasized that statutes enacted under Congress's spending powers will rarely do so. *Id.* at 279-80. The reason is that spending legislation is contractual: states agree to comply with federal spending conditions in exchange for federal funds. *Id.* And the "typical remedy" for a state's violation of federal spending conditions is "not a private cause of action for noncompliance," but a decision by the federal government to terminate the state's funds. *Id.* at 280 (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 28 (1981)).

Because spending legislation is akin to a contract, Congress must "speak with a clear voice, and manifest an unambiguous intent to confer individual rights" enforceable under Section 1983. *Id.* (cleaned up). Otherwise, the state has not voluntarily consented to Section 1983 enforcement as part of the contract with the United States. *See id.*; *see also Medina v. Planned Parenthood S. Atl.*, 145 S. Ct. 2219, 2234 (2025). The Court's recent decisions in *Medina* and *Talevski* reaffirm this principle. *Medina*, 145 S. Ct. at 2232-34; *Talevski*, 599 U.S. at 183.

The VRA does not raise the same concerns. Congress did not enact Section 2 under its spending power. Instead, Congress enacted Section 2 using its authority to enforce the Fourteenth and Fifteenth Amendments. The Fifteenth Amendment guarantees citizens the right to vote free of discrimination based on race, prohibits any state from denying this right, and gives Congress the "power to enforce this article by appropriate legislation." U.S. Const. amend. XV. The Civil Rights Act of 1871 sought to

bolster these protections, and the Act's first section (now codified at 42 U.S.C. § 1983) "opened the federal courts to private citizens, offering a uniquely federal remedy against incursions" by the states. *Mitchum v. Foster*, 407 U.S. 225, 238-39 (1972). Consequently, the Reconstruction Amendments and Section 1983 "already altered the constitutional balance by limiting the power of the States and enlarging the power of Congress." App. 30a (Colloton, J. dissenting); *see also Fitzpatrick v. Bitzer*, 427 U.S. 445, 454 (1976) (enforcing the Fourteenth Amendment's prohibitions does not invade state sovereignty); *Mitchum*, 407 U.S. at 242 (recognizing Section 1983's purpose "was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law").

The Eighth Circuit rejected the petitioners' argument that the *Gonzaga* test does not apply to laws enacted under the Fourteenth and Fifteenth Amendments. App. 26a-27a. But it did so in a cursory fashion, ignoring the Court's rationale across several cases for why Spending Clause legislation requires such a clear statement from Congress. *Medina*, 145 S. Ct. at 2232-34 (collecting cases). The Court should grant review to clarify that *Gonzaga*'s "unambiguous conferral" requirement does not extend to Reconstruction Amendment enforcement legislation like the VRA.

2. The Eighth Circuit ignored the clear rights-creating language in Section 2.

Even assuming *Gonzaga*'s "unambiguous conferral" requirement applies, Section 2 unambiguously confers

enforceable rights. The Eighth Circuit ignored *Talevski* in holding otherwise.

Congress unambiguously confers individual rights when a statute uses "rights-creating" language and is "phrased in terms of the persons benefited" with an "unmistakable focus on the benefited class." *Talevski*, 599 U.S. at 183. Although the Court has described this test as stringent, it is not insurmountable. *Id.* at 186. Indeed, in *Talevski*, the Court recently held that two statutory provisions passed this test. *Id.* at 184-86.

As the petition explains in detail, Section 2 contains rights-creating language analogous to *Talevski*. Pet. 27-28. Section 2 prohibits practices that "result[] in a denial or abridgement of *the right of any citizen . . . to vote* on account of race or color." 52 U.S.C. § 10301(a) (emphasis added). The relevant statutory titles, plus other VRA provisions, confirm Section 2's rights-creating focus. *See, e.g.*, *id.* ch. 103, § 10301 (referring to "Enforcement of Voting Rights"); *id.* § 10308(a), (c) (referring to the "right secured" by Section 2). Even the Eighth Circuit recognized that Section 2 "'unmistakably focuses on the benefited class'" because the first sentence of the text refers to the "'right of any citizen.'" App. 20a (quoting *Ark. NAACP*, 86 F.4th at 1210); *see also Ga. State Conf. of NAACP v. Georgia*, No. 1:21-CV-533-ELB-SCJ-SDG, 2022 WL 18780945, at *4 (N.D. Ga. Sept. 26, 2022) (panel) ("If that is not rights-creating language, we are not sure what is.").

Moreover, statutes with rights-creating language can be enforceable under Section 1983 even if they also impose requirements on regulated entities. In *Talevski*,

for example, the relevant statutory provisions expressly referred to the "rights" of the benefited class (nursing-home residents) but also directed requirements at the regulated entities (nursing homes). 599 U.S. at 184-86. The Court explained that the references to the regulated entities were "not a material diversion from the necessary focus on the nursing-home residents." *Id.* at 185.

The Eighth Circuit ignored these directives when it held that Section 2's "dual focus on the individuals protected and the entities regulated" meant that the statute did not unambiguously confer an individual right. App. 22a. Because the Eighth Circuit's decision conflicts with precedent and undermines the voting rights of millions of voters, the Court should grant certiorari.

B. The Eighth Circuit's Decision Conflicts with This Court's Implied-Right-of-Action Precedent and Creates a Circuit Split.

Certiorari is also appropriate because the Eighth Circuit misunderstood this Court's precedent on implied rights of action under the VRA. Sup. Ct. R. 10(a). The Eighth Circuit built on its earlier decision in *Arkansas NAACP*, which held that Section 2 does not provide an implied right of action. App. 19a-20a. By doubling down on *Arkansas NAACP*, the Eighth Circuit reinforced a direct split with the Fifth, Sixth, and Eleventh Circuits, plus numerous district courts in other circuits, all of which have concluded that Section 2 of the VRA creates an implied right of action independent of Section 1983. Moreover, the Eighth Circuit departed from this Court's precedent, congressional understanding, and the VRA's text, structure, and history. Certiorari is necessary to

resolve the split and to reaffirm that the VRA creates an implied right of action.

1. The Eighth Circuit did not follow *Morse v. Republican Party of Virginia*, and split with three circuits and numerous federal district courts.

As the petition correctly summarizes, this Court has long recognized that Section 2 creates an implied right of action, and this precedent directly contravenes the Eighth Circuit's decision. Pet. 36-39. *Morse v. Republican Party of Virginia* is the key case. 517 U.S. 186 (1996). There, the Court considered whether Section 10 of the VRA—which prohibits poll taxes—created an implied right of action. *Id.* at 230-34 (opinion of Stevens, J., joined by Ginsburg, J.). Like Sections 2 and 5, Section 10 does "not expressly mention private actions." *Id.* at 230. Still, a majority concluded that private parties could enforce Section 10. *Id.* at 230-34; *accord id.* at 240 (Breyer, J., concurring, joined by O'Connor & Souter, JJ.). In so holding, the *Morse* majority reasoned that Sections 2 and 5 were both enforceable by private parties, and that it would be "anomalous" to hold that Section 10 was not. *Id.* at 232 (opinion of Stevens, J.).

Applying *Morse* and this Court's other seminal VRA precedents, the Fifth, Sixth, and Eleventh Circuits have all held that Section 2 is enforceable through private action. *See Robinson v. Ardoin*, 86 F.4th 574, 588 (5th Cir. 2023); *Ala. State Conf. of NAACP v. Alabama*, 949 F.3d 647, 651-52 (11th Cir. 2020), *vacated as moot*, 141 S. Ct. 2618 (2021); *Mixon v. Ohio*, 193 F.3d 389, 406 (6th Cir. 1999). So have a slew of district courts. *See, e.g.*, *Driver*

v. Hous. Cnty. Bd. of Elections, No. 5:25-cv-25 (MTT), 2025 WL 2523719, at *2-3 (M.D. Ga. Sept. 2, 2025); *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1315 (N.D. Ala. 2025) (panel); *Miss. State Conf. of NAACP v. State Bd. of Election Comm'rs*, 739 F. Supp. 3d 383, 410-12 (S.D. Miss. 2024) (panel). Because the Eighth Circuit stands alone, its decision warrants review.

2. The Eighth Circuit departed from this Court's approach to discerning implied rights of action.

Even if *Morse* did not control, the Eighth Circuit departed from this Court's precedent on implied rights of action. The touchstone for analyzing implied rights of action is congressional intent. *Alexander v. Sandoval*, 532 U.S. 275, 288-93 (2001). Most critical is whether a statute contains "rights-creating" language from which courts can infer intent to create a private right of action. *Id.* at 288. Courts must also consider whether the statutory scheme "manifest[s] an intent to create a private remedy." *Id.* at 289.

As discussed above, Section 2 contains "rights-creating" language. But the VRA's text, structure, and history also reflect Congress's intent to create a private remedy.

Start with text and structure. Several provisions of the VRA contemplate enforcement by private parties. Section 3, for example, authorizes "the Attorney General *or an aggrieved person*" to institute proceedings "under any statute" to enforce the Fourteenth and Fifteenth Amendments' voting guarantees. 52 U.S.C. § 10302(a)

(emphasis added). Section 12 similarly confirms federal courts' jurisdiction regardless of "whether *a person asserting rights* under the [VRA]" exhausted administrative or other remedies. *Id.* § 10308(f) (emphasis added). And Section 14 allows courts to award reasonable fees and costs to "the prevailing party, *other than the United States*." *Id.* § 10310(e) (emphasis added).

The statutory history reinforces that Congress intended for Section 2 to be directly enforceable by private parties. For example, Section 3 did not originally include the phrase "aggrieved person." But Congress added this phrase in 1975 to make clear that not only the Attorney General could enforce the VRA. *Morse*, 517 U.S. at 233. As the *Morse* majority emphasized, the 1975 amendment reflected Congress's intent to broadly "provide private remedies." *Id.* at 233-34, 240.

Similarly, the Eighth Circuit's analysis defies Congress's will. Courts, Congress, states, local governments and private parties have all acted for decades with the understanding that Section 2 creates an implied right of action. Indeed, Congress has repeatedly reenacted the VRA without substantive changes, thus ratifying the consensus that Section 2 is privately enforceable. *See Allen*, 599 U.S. at 19 (reinforcing *Gingles* as governing Section 2 test because it had been applied for decades without Congress disturbing it); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239-40 (2009) (presuming Congress knows of administrative and judicial interpretations of statutes and that it adopts those interpretations when re-enacting statutes without change); *see also* Pub. L. No. 109-246, 120 Stat. 577 (2006); Pub. L. No. 97-205, 96 Stat. 131 (1982); Pub. L. No. 94-73, 89 Stat. 400 (1975); Pub.

L. No. 91-285, 84 Stat. 14 (1970); S. Rep. No. 97-417, at 30 (1982) ("[T]he Committee reiterates the existence of the private right of action under section 2, as has been clearly intended by Congress since 1965."). If federal courts across the country—for decades—have misinterpreted Section 2, Congress surely would have corrected this mistake by now.

The Eighth Circuit has thus deviated from this Court's test for implied rights of action, which requires careful attention to text, structure, *and* context. *Sandoval*, 532 U.S. at 287-88. True, courts cannot give "dispositive weight to context shorn of text." *Id.* at 288. But courts can consider context—including history—when it "clarifies text." *Id.* And here, history reinforces the textual and structural evidence that Congress intended for private-party enforcement of Section 2.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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