No. 17-869

IN THE
Supreme Court of the United States

MELISSA DAVENPORT AND MARSHALL G. HENRY,
Petitioners,
v.
CITY OF SANDY SPRINGS, GEORGIA,
Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

BRIEF OF DKT LIBERTY PROJECT AND REASON FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

Amici are non-profit organizations dedicated to protecting individual liberties, and especially those liberties guaranteed by the Constitution of the United States, against all forms of government interference. *Amici* have a particular interest in this case because the Eleventh Circuit's decision affects the ability of all individuals to protect their rights in federal court.

DKT Liberty Project was founded in 1997 to promote individual liberty against encroachment by all levels of government. The Liberty Project is committed to defending privacy, guarding against government overreach, and protecting every American's right and responsibility to function as an autonomous and independent individual. The Liberty Project espouses vigilance over regulation of all kinds, but especially those that restrict individual civil liberties. The Liberty Project has filed several briefs as *amicus curiae* with this Court on issues involving constitutional rights and civil liberties, including the freedom from unreasonable searches and seizures and the right to own and enjoy property.

Reason Foundation is a non-partisan and non-profit public policy think tank, founded in 1978. Reason

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[1] Pursuant to Rule 37.2, *amici* notified counsel of record for all parties of their intent to file an *amicus* brief at least ten days prior to the due date for the brief. The parties' written consent to this filing accompany this brief. Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and no person other than *amici* and their counsel made a monetary contribution to its preparation or submission.

advances a free society by developing, applying, and promoting libertarian principles, including individual liberty, free markets, and the rule of law. Reason produces respected public policy research on a variety of issues and publishes the critically-acclaimed Reason magazine. To further Reason's commitment to "Free Minds and Free Markets," Reason has participated as *amicus curiae* in numerous cases in this Court that involve significant legal and constitutional issues.

SUMMARY OF ARGUMENT

The Eleventh Circuit dismissed Petitioners' Section 1983 claims as moot, reasoning that there is no live case or controversy when plaintiffs allege constitutional injuries but pray only for nominal damages. Pet. App. 38a. In the court's view, this is because "the parties' right to a single dollar in nominal damages is not the type of 'practical effect' that should, standing alone, support Article III jurisdiction." *Id.* The Eleventh Circuit's decision reads an amount-in-controversy requirement into Article III for all claims seeking retrospective relief. As discussed in the Petition, this has created a circuit split on an important question about the case-or-controversy requirement. Pet. 10–13. This Court has a special responsibility to resolve disagreements about the outer boundaries of judicial power, and that by itself is a compelling reason to grant certiorari. Furthermore, as the Petition notes, the decision below is wrong. It cannot be squared with this Court's precedents, and it lacks any foundation in the history of the common law. Pet. 15–19.

Amici write separately, however, to draw this Court's attention to the practical consequences of the Eleventh Circuit's decision, which will be both far-reaching and damaging. As organizations that advocate for individual liberties and constitutional rights, *amici* have serious concerns about the implications of the Eleventh Circuit's decision for constitutional litigation and therefore respectfully request that this Court grant the Petition.

First, the Eleventh Circuit's rule would disrupt constitutional litigation under Section 1983. Ever since Congress enacted the Civil Rights Act of 1871, the private right of action now codified at 42 U.S.C. § 1983 has served as the main vehicle for protecting constitutional rights against interference by state government actors. If the Eleventh Circuit's decision were allowed to stand, it would reshape the statutory design Congress crafted over nearly 150 years. Given the central importance of Section 1983 and the rights it protects, this Court should take the opportunity to consider whether Article III demands these changes.

Second, the Eleventh Circuit's rule would have widespread effects on the litigation of all claims seeking retrospective relief in federal court. The history of federal question jurisdiction provides an object lesson. Congress experimented with an amount-in-controversy requirement for federal question cases for over a century. Congress eventually repealed this requirement because it had several pernicious effects on the administration of federal law. In particular, it wasted judicial resources and led to inconsistent

application in the lower courts. It conflicted with sound principles of federalism by driving essentially federal issues into state courts. And it depressed public trust and confidence in the judiciary. The Eleventh Circuit's rule would have similar consequences, and this Court should therefore consider whether Article III compels them.

For all of these reasons, this Court should grant the Petition.

ARGUMENT

I. The Eleventh Circuit's Rule Would Disrupt Constitutional Litigation Under Section 1983.

This Court should grant certiorari because the Eleventh Circuit's rule would disrupt an exceptionally important statutory scheme. Because the rule rests on an interpretation of Article III, Congress cannot legislate around it. If the Eleventh Circuit erred, only this Court can prevent these disruptive effects.

Congress has long had the power to enact remedial schemes to prevent and redress intangible injuries. *See Spokeo v. Robins*, 136 S. Ct. 1540, 1549 (2016). Nominal damages are often an important component of these remedial schemes. Indeed, nominal damages are a traditional form of retrospective relief for these types of injuries. *See id.* at 1551 (Thomas, J., concurring); *Carey v. Piphus*, 435 U.S. 247, 266 (1978). This is so for several reasons. Most importantly, the law has traditionally recognized a nominal damages remedy where the individual rights at stake are of paramount importance or "absolute," such that even fleeting

violations should be actionable. "By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed." *Carey*, 435 U.S. at 266. Nominal damages are a particularly apt form of relief in these situations because the value of the plaintiff's rights will usually be hard—if not impossible—to measure in monetary terms. It will also be difficult in these cases to prove a causal connection between a violation of the plaintiff's rights and some measurable loss.

In our legal system, no rights have a greater claim to "absolute" status than the individual rights and liberties protected by the Constitution of the United States. *See, e.g.*, *id.*; *City of Riverside v. Rivera*, 477 U.S. 561, 574 (1986). And no statutory scheme plays a greater role in protecting those rights than Section 1983. For nearly 150 years, this private right of action has served as the main vehicle for vindicating those who are deprived of constitutional rights by state government actors. This is an exceptionally important provision not only because of the rights it protects, but also because litigation under Section 1983 makes up a substantial portion of the federal docket each year.

This remedial scheme incorporates a finely-tuned set of policy judgments. The most fundamental policy underlying Section 1983 is the need to protect constitutional rights through private enforcement. This is reflected in the basic provision of a private right of action, of course, but also in Congress's decision to

make attorneys' fees available to prevailing parties under 42 U.S.C. § 1988. *See* H.R. Rep. No. 94-1558, at 1 (1976); S. Rep. No. 94-1011, at 2–3 (1976) as reprinted in 1976 U.S.C.C.A.N. 5908, 5909–10. As this Court recognized in *City of Riverside v. Rivera*, "Congress enacted § 1988 specifically to enable plaintiffs to enforce the civil rights laws even where the amount of damages at stake would not otherwise make it feasible for them to do so." 477 U.S. at 577. Without the chance to recover attorneys' fees, many plaintiffs—even reasonably well-off ones—could not realistically afford to litigate their claims in federal court, no matter how meritorious. *See Hudson v. Michigan*, 547 U.S. 586, 597 (2006); H.R. Rep. No. 94-1558, at 1; S. Rep. No. 94-1011, at 2, as reprinted in 1976 U.S.C.C.A.N. at 5910.

Congress concluded that it was critical to encourage these plaintiffs' suits because "effective enforcement of Federal civil rights statutes depends largely on the efforts of private citizens." H.R. Rep. No. 94-1558, at 1. But Section 1983 plaintiffs are not the sole beneficiaries when they obtain relief on the merits. Rather, successful Section 1983 plaintiffs win redress for their own injuries while preventing other citizens in their jurisdiction from suffering the same injuries in the future. As this Court once put the point, "a plaintiff who obtains relief in a civil rights lawsuit 'does so not for himself alone but also as a "private attorney general," vindicating a policy that Congress considered of the highest importance.'" *City of Riverside*, 477 U.S. at 575 (quoting H.R. Rep. No. 94-1558, at 2); *see also Farrar v. Hobby*, 506 U.S. 103, 121–22 (1992) (O'Connor, J., concurring).

Another fundamental policy underlying Section 1983 is the need for a federal forum in which to pursue private enforcement. In Congress's view, state law remedies for constitutional injuries and the deprivations of other federal rights before the enactment of Section 1983 were all too often non-existent or inadequate. *See Monroe v. Pape*, 365 U.S. 167, 173–80 (1961), *overruled on other grounds by Monell v. Dep't Soc. Servs. of City of N.Y.*, 436 U.S. 658 (1978). Leaving it to the states to redress constitutional injuries would have led to radical under-enforcement of constitutional and federal rights. Through Section 1983, "the role of the Federal Government as a guarantor of basic federal rights against state power was clearly established." *Mitchum v. Foster*, 407 U.S. 225, 239 (1972). Allowing plaintiffs to bring these claims to federal court also had salutary effects on the administration of federal law. It preserved the federal courts' strong interest in deciding quintessentially federal issues and ensured greater uniformity in the application of federal law.

A third fundamental policy underlying Section 1983 is the need to make a federal forum available regardless of the amount in controversy. For nearly 150 years, it has been Congress's judgment that the protection of constitutional rights should not depend on plaintiffs' resources or the pecuniary value of their injuries. *See Carey*, 435 U.S. at 266; *City of Riverside*, 477 U.S. at 574. This judgment is reflected in the availability of nominal damages, which this Court has recognized on several occasions. *See Farrar*, 506 U.S. at 112; *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299,

308 n.11 (1986); *Carey*, 435 U.S. at 266–67. It is also reflected in the lack of any amount-in-controversy requirement in 28 U.S.C. § 1343(3), which is the statutory grant of jurisdiction over Section 1983 claims. *See Lynch v. Household Fin. Corp.*, 405 U.S. 538, 546–47 (1972); *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 528–30 (1939) (Stone, J., concurring). Indeed, for decades it was the law that plaintiffs could invoke federal courts' jurisdiction under Section 1343(3) *only* if their injuries were "inherently incapable of pecuniary valuation." *Hague*, 307 U.S. at 530 (Stone, J., concurring); 13D Charles Alan Wright et al., *Federal Practice and Procedure* § 3561.1 (3d ed. 2008 & Supp. 2017).

Applying an amount-in-controversy requirement to Section 1983 claims, as the Eleventh Circuit has, would throw a wrench into this carefully designed framework.

First, the rule would inevitably drive many plaintiffs out of federal court, even when Congress chose to make a federal forum available to them. In at least nine other circuits, plaintiffs may bring Section 1983 claims in federal court seeking only nominal damages. Pet. 12. But plaintiffs seeking retrospective relief in the Eleventh Circuit will have to pray for some substantial amount of monetary relief. Moreover, because the Eleventh Circuit's rule is jurisdictional, plaintiffs will have to maintain their claims for monetary relief through every phase of litigation. Plaintiffs who cannot manage this will have to seek relief in state courts. The number of plaintiffs affected by this change may be quite large, since most

constitutional rights are by their nature difficult—if not impossible—to value in monetary terms. *See City of Riverside*, 477 U.S. at 574; *Memphis*, 477 U.S. at 310.

The rule would also disqualify plaintiffs who have a credible case for substantial monetary relief but choose not to pursue it because litigating damages would be intrusive or humiliating. As Petitioners note, many plaintiffs have compelling reasons for not wanting to make the full extent of their constitutional injuries a matter of public record. Pet. 21–22. This would be understandable, for example, when litigating their damages theories would require scrutiny of their religious beliefs, the extent of their participation in unpopular groups, or the intimate details of their private lives. In the present case, pursuing compensatory damages would have required the Petitioners to disclose and subject themselves to cross-examination about the details of their marriages and sex lives. For citizens like the Petitioners, the alternative remedy of nominal damages gives them the option of vindicating their rights while preserving their dignity and privacy. Under the Eleventh Circuit's rule, plaintiffs do not have this option.

Second, the Eleventh Circuit's rule would make it much harder for many plaintiffs to find representation, even when they can show a substantial amount of damages. Preparing and litigating a damages theory is time-consuming and expensive. It requires extra care at the pleadings stage, the development and presentation of additional evidence, and often the services of expert witnesses. All of this would make

the average Section 1983 case more expensive to pursue.

The Eleventh Circuit's rule will also decrease a plaintiff's chances of recovering attorneys' fees. It is common practice for courts to reduce the attorneys' fees awards for Section 1983 plaintiffs who do not recover as much as they sought. *See, e.g.*, *Farrar*, 506 U.S. at 114–16; *Gray ex rel. Alexander v. Bostic*, 720 F.3d 887, 895 (11th Cir. 2013) (holding that prevailing Section 1983 plaintiff was entitled to no attorneys' fees after an award of nominal damages); *Perlman v. Zell*, 185 F.3d 850, 859–60 (7th Cir. 1999) (Easterbrook, J.). Requiring plaintiffs to pursue a substantial amount damages—even when all they want is vindication of their rights—sets them up for failure and increases the risk that they will walk away empty-handed. The more expensive and riskier constitutional cases become, the less likely the private bar will be to take them. In the long run, the Eleventh Circuit's rule would put relief out of reach for plaintiffs who do not have a strong case for damages.

Third, the Eleventh Circuit's rule would undermine the private attorney general system by depriving many meritorious plaintiffs of prevailing party status. If a municipality can moot a claim for retrospective relief simply by rescinding a challenged ordinance or policy, it can deprive a plaintiff of an enforceable judgment and prevailing party status. *See Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 600 (2001). This would be true even when the plaintiff clearly has a winning case on an important

constitutional question. Allowing municipalities to moot claims for retrospective relief in this way would frustrate Congress's intent to have these plaintiffs serve as a vehicle for adjudicating important questions of federal law. As Congress saw, individual plaintiffs are not the only ones who lose when this happens. By depriving meritorious plaintiffs of a judgment on the merits, all other citizens in the jurisdiction lose the legal protections that judgment would have provided.

In sum, the Eleventh Circuit's rule would frustrate Congress's intent in several respects. It would close the doors on plaintiffs to whom Congress has long offered a federal forum. It would put burdens on plaintiffs that Congress never intended them to shoulder. And it would undermine the private attorney general system Congress put in place to protect constitutional rights.

If the decision below is allowed to stand, Congress will have no way to reform Section 1983 to prevent these consequences. It was central to Congress's design that Section 1983 plaintiffs be allowed to seek relief regardless of the amount in controversy. But under the Eleventh Circuit's holding, there is no constitutionally permissible way for many of these plaintiffs to litigate in federal court. Accordingly, if the Eleventh Circuit erred, only this Court can correct the error and avoid upsetting the core design of Section 1983 litigation. Given the central importance of Section 1983 and the rights it protects, this Court should grant certiorari to determine whether Article III requires these changes.

II. The Eleventh Circuit's Rule Would Have Far-Reaching Consequences for the Courts and Federal Litigants, as Shown by the History of Federal Question Jurisdiction.

While the Eleventh Circuit's rule will have particularly pernicious effects on constitutional litigation under Section 1983, the decision below is not limited to Section 1983 claims. Instead, it applies to *every* federal claim seeking retrospective relief. Pet. App. 38a. Because of its sweep, the decision below would have widespread effects on litigation in the Eleventh Circuit. This Court should grant certiorari to consider whether Article III compels these effects.

The history of federal question jurisdiction offers an instructive precedent. From 1875 to 1980, Congress included an amount-in-controversy requirement for federal question cases. *See Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 377 (2012); 13D Wright et al., *Federal Practice and Procedure* § 3561.1. The requirement began at $500 in 1875 and steadily rose to $10,000 by 1958. 13D Wright & Miller, *Federal Practice and Procedure* § 3561.1. The purpose of this requirement was "to reduce case congestion in the Federal courts by setting a figure not so high as to convert the Federal courts into courts of big business nor so low as to fritter away their time in the trial of petty controversies." H.R. Rep. No 94-1656, at 13 (1976), as reprinted in 1976 U.S.C.C.A.N. 6121, 6134; *see also* S. Rep. No. 94-996, at 12–13 (1976).

But experience showed that the requirement created more problems than it solved. Crucially, it

placed an excessive burden on plaintiffs seeking to vindicate important federal rights. For these types of claims, Congress concluded in hindsight that "[t]he factors relevant to the question whether a Federal court should be available . . . have little, if any, correlation with the minimum jurisdictional amount." H.R. Rep. No. 94-1656, at 15, as reprinted in 1976 U.S.C.C.A.N. at 6135. As a result, "[i]n some of these cases the jurisdictional amount requirement cannot be met because it is impossible to place a monetary value on the right asserted by the plaintiff." *Id.* at 14, as reprinted in 1976 U.S.C.C.A.N. at 6134. In cases where the plaintiff's injury could be assigned a monetary value, the actual amount in controversy would often fail to satisfy the minimum requirement. *See id.*

Congress repealed the amount-in-controversy requirement for most federal question cases in 1976, and for the rest in 1980. Act of Oct. 21, 1976, Pub. L. No. 94-574, 90 Stat. 2721; Federal Question Jurisdictional Amendments Act of 1980, Pub. L. No. 96-486, 94 Stat. 2369. This was in part because Congress "[r]ecogniz[ed] the responsibility of federal courts to decide claims, large or small, arising under federal law." *Mims*, 565 U.S. at 377. But Congress also repealed the requirement because it had several unintended effects on the administration of federal law.

First, the amount-in-controversy requirement "waste[d] scarce judicial resources in the complicated task of measuring the amount in controversy." H.R. Rep. No. 96-1461, at 2 (1980). This Court has similarly observed that jurisdictional rules may "result in the

waste of judicial resources and may unfairly prejudice litigants." *See Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011).

Second, the requirement was inconsistently applied by the lower courts. *See* 13D Wright et al., *Federal Practice and Procedure* § 3561.1. This was particularly visible in cases involving constitutional rights, where the importance of the rights involved created strong incentives for courts to strain to find jurisdiction. In these cases, some courts greatly relaxed plaintiffs' burden to prove the jurisdictional amount was satisfied. *See, e.g.*, *Comm. for GI Rights v. Callaway*, 518 F.2d 466, 473 (D.C. Cir. 1975). Other courts simply assumed that constitutional violations satisfied the amount-in-controversy requirement. *See Smith v. Washington*, 593 F.2d 1097, 1099–1101 (D.C. Cir. 1978) (Bazelon, J.); *Spock v. David*, 469 F.2d 1047, 1051–52 (3d Cir. 1972).

Third, the requirement failed to respect core values of federalism by steering federal claims into state courts. Eliminating the amount-in-controversy requirement "represent[ed] sound principles of federalism by mandating that the Federal courts should bear the responsibility of deciding all questions of Federal law." H.R. Rep. No. 96-1461, at 1. The change also showed respect for states "by providing that federal claims should not be forced on the overburdened state court systems." *Id.*

The need to restore this balance was particularly acute for claims against federal officers. As then-Assistant Attorney General Antonin Scalia observed in

his testimony before Congress, when deciding whether to open the doors of the federal courts to these claims:

> [T]he important considerations include whether there is a need for a specialized Federal tribunal or whether there are defects in the state judicial system that might substantially impair consideration of the plaintiff's claim. These factors have special force in cases in which specific relief is sought against a Federal officer because state courts generally are powerless to restrain or direct a Federal officer's action which is taken under color of Federal law. The denial of a Federal forum for lack of the jurisdictional amount may therefore be a denial of any remedy whatsoever. Justice clearly requires elimination of this deficiency.

H.R. Rep. No. 94-1656, at 15, as reprinted in 1976 U.S.C.C.A.N. at 6135 (footnotes omitted).

Fourth, the amount-in-controversy requirement reduced public confidence in the judiciary. As the House and the Senate concluded in both 1976 and 1980, "[w]e do nothing to encourage confidence in our judicial system or in the ability of persons with substantial grievances to obtain redress through lawful processes when we close the courthouse door to those who cannot produce [the jurisdictional amount] as a ticket of admission." H.R. Rep. No. 94-1656, at 17, as reprinted in 1976 U.S.C.C.A.N. at 6137; *see also* S. Rep. No. 94–996, at 16; H.R. Rep. No. 96-1461, at 2; S. Rep. No. 96-827, at 4 (1980). Congress was particularly concerned about cultivating trust and confidence among citizens of

modest means, to whom jurisdictional amounts send the message that "although their Federal rights have been violated, their injury is too insignificant to warrant the attention of a Federal judge." H.R. Rep. No. 96-1461, at 2 (1980).

This Court has every reason to expect similar consequences from the decision below. It imposes a similar requirement on similar types of claims. In fact, the Eleventh Circuit's rule applies more broadly than the amount-in-controversy requirement for federal question cases did. Congress limited the latter's reach through piecemeal legislation that granted jurisdiction over various types of federal claims regardless of the amount in controversy. *See Lynch*, 405 U.S. at 549–50; 13D Wright et al., *Federal Practice & Procedure* § 3561.1. By contrast, the Eleventh Circuit's rule applies to *every* claim for retrospective relief. And it will always do so, given that the Eleventh Circuit grounded its decision in Article III. The court's "practical effect" standard leaves no way to know for sure whether, in practice, the rule will be more or less onerous than the $10,000 amount-in-controversy requirement for federal question cases. But the rule's consequences will be similarly far-reaching given both its scope and its grounding in the Constitution.

Like the amount-in-controversy requirement for federal question cases, the Eleventh Circuit's rule would impose a drain on judicial resources. Although the rule does not establish a particular dollar figure needed for Article III jurisdiction, it applies to every claim for retrospective relief filed in federal court. For

all of these claims, courts will have to monitor whether the plaintiff has a live claim for non-trivial damages at every phase of the litigation. And parties will have clear incentives to spend considerable time and effort litigating this precise question. Moreover, because the rule requires courts to engage in an amorphous "practical effect" inquiry, answering that question will be significantly more complicated than under a typical amount-in-controversy requirement.

The Eleventh Circuit's rule also poses a significant risk of discord in the lower courts, since it would apply to claims involving constitutional and other important federal rights. This Court has closed some potential avenues for this. For example, in *Memphis Community School District v. Stachura*, this Court held that "damages based on the abstract 'value' or 'importance' of constitutional rights are not a permissible element of compensatory damages." 477 U.S. at 310. But the case law still leaves plenty of room for courts to divide over how to apply the Eleventh Circuit's rule. For example, *Memphis* explicitly left open the option of awarding presumed damages as a substitute for compensatory damages for constitutional injuries. *Id.* at 310–11. And courts may still draw on several other categories of damages to assess jurisdictional requirements, such as punitive damages and damages for mental and emotional distress. This is troubling because, over time, plaintiffs with the same federal claims may not have the same ability to seek relief in federal court, depending on how flexible judges in their districts choose to be.

The Eleventh Circuit's rule also would take a toll on values of federalism. Plaintiffs who cannot plausibly allege or substantiate a claim for substantial monetary relief will have to press their claims in state court. Plaintiffs with nominal damages claims against federal officers will have no relief at all. The same would be true of plaintiffs who have claims over which federal courts currently have exclusive jurisdiction. The sudden migration of federal claims to state courts would be particularly burdensome on the states because caseloads in both federal and state court have grown considerably since 1980. *See* Federal Judicial Center, *Caseloads: Civil Cases, Private 1873-2016* (new civil filings in which the United States was not a party increased from 105,161 in 1980 to 231,715 in 2016).[2] *Compare* Court Statistics Project, *Examining the Work of State Courts: An Overview of 2015 State Court Caseloads* 3, 19 (2016) (finding 86.2 million new cases filed in state trial courts in 2015, in spite of a decline from 102.4 million in 2006, and 260,000 new appellate cases)[3] *with* National Center for State Courts, *State Court Caseload Statistics: Annual Report, 1980* 15, 55 (1984) (estimating 58.7 million new cases filed in state trial courts and 147,333 new appellate cases in 1980).[4] Funneling federal claims into state courts also would create many new opportunities for disagreements in

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[2] https://www.fjc.gov/history/courts/caseloads-civil-cases-private-1873-2016 (last visited Jan. 8, 2018).

[3]http://www.courtstatistics.org/~/media/Microsites/Files/CSP/EWSC%202015.ashx.

[4] https://www.bjs.gov/content/pub/pdf/sccs80.pdf.

the application of federal law, which only this Court could resolve.

Finally, the Eleventh Circuit's rule would erode public trust and confidence in the judiciary. This Court has an interest of the highest order in preserving trust and confidence in the judiciary because its authority "depends in large measure on the public's willingness to respect and follow its decisions." *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1666 (2015); *see also Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009). Many factors sustain the public's trust and confidence in the courts, but surely one of these factors is the perception that they stand ready to protect constitutional and other federal rights. *Cf. Offutt v. United States*, 348 U.S. 11, 14 (1954) (Frankfurter, J.) ("justice must satisfy the appearance of justice"). Another factor is the perception that federal judges faithfully adhere to their oath to "administer justice without respect to persons, and do equal right to the poor and to the rich." *Williams-Yulee*, 135 S. Ct. at 1666 (quoting 28 U.S.C. § 453). The Eleventh Circuit's decision would foster the opposite perceptions.

This Court should grant certiorari to consider whether Article III compels these consequences before the Eleventh Circuit or any other court proceeds further down this course.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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