No. A24-0271

STATE OF MINNESOTA
IN SUPREME COURT

State of Minnesota,
Respondent,

v.

Nicholas Norton Engel,
Appellant,

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION AND AMERICAN CIVIL LIBERTIES UNION OF MINNESOTA

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Constituional Provisions

Federal Cases

State Cases

State Statutes, Rules & Regulations

Other Authorities

INTEREST OF AMICI CURIAE[1]

The American Civil Liberties Union is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in federal and state Constitutions and in civil rights laws. The ACLU of Minnesota is the ACLU's statewide Minnesota affiliate. Protections against unreasonable searches and seizures, as guaranteed by the Fourth Amendment and Article I, Section 10 of the Minnesota Constitution, and the preservation of longstanding remedies for violations of those guarantees, are of special concern to each organization. Both organizations are collectively referred to herein as the "ACLU."

[1] Under Minnesota Rule of Civil Appellate Procedure 129.03, Amici state that no counsel for a party authored the brief in whole or in part and no other person or entity, other than the amici curiae, their members, or their counsel, made a monetary contribution to the preparation or submission of the brief.

SUMMARY OF THE ARGUMENT

When the police tried to stop him illegally on a dark rural road, defendant Nicholas Engel put off stopping until he reached a better-lit location where it was more probable that witnesses would observe the illegal traffic stop. The evidence of this "flight" was then used to charge Mr. Engel with a crime, leveraging Mr. Engel's understandable reaction to a baseless stop into a basis for prosecuting him. The court of appeals held that the flight evidence must not be suppressed, due to its belief that it had to apply a blanket rule against suppressing evidence when a suspect responds to an unconstitutional seizure by committing a new crime. This Court, however, should reject that blanket rule in favor of a flexible test that can allow for suppression of evidence where, as here, a suspect responds to an illegal stop or seizure with nonviolent attempts to keep himself safe.

The Minnesota Constitution is key here. Article I, Section 10 of the Minnesota Constitution reflects Minnesota's commitment to protecting its citizens from unreasonable searches and seizures. That commitment, together with the guarantee of "a certain remedy in the laws for all injuries" appearing in the remedies clause of Article 1, Section 8, calls for a broad application of the exclusionary rule for evidence arising from illegal searches and seizures, no matter how federal courts might approach that issue. Federal courts have not addressed the question presented here under the Fourth Amendment to the U.S. Constitution, and the U.S. Supreme Court has generally retrenched from the federal exclusionary rule as initially articulated in *Mapp v. Ohio*, 367 U.S. 643, 648–50 (1961). *See, e.g.*, *United States v. Calandra*, 414 U.S. 338, 347–48 (1974); *United States v. Leon*, 468 U.S. 897, 905–06 (1984); *Hudson v. Michigan*, 547 U.S. 586, 591–92 (2006); *Utah v.*

Strieff, 579 U.S. 232, 237–38 (2016). But this Court should not retrench from the exclusionary rule under the Minnesota Constitution. In the words of Justice William Brennan, "[s]tate constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court's interpretation of federal law." William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 491 (1977). This Court is the "first line of defense for individual liberties within the federalist system." *State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1985).

That defense is needed here. Mr. Engel did not fully flee an illegal traffic stop; instead, he simply delayed the stop by driving to a location where he felt that, due to the presence of witnesses, he would be safer from any further violations of his legal rights. Typically, in deciding whether to suppress evidence as "fruit of the poisonous tree" following an illegal stop, Minnesota courts have applied the balancing test from *State v. Weekes*, 250 N.W.2d 590, 595 (Minn. 1977) ("*Weekes I*") (citing *Brown v. Illinois*, 422 U.S. 590, 604 (1975) (the "*Weekes* factors"): (1) the temporal proximity of the illegality and the evidence alleged to be the fruit of that illegality, (2) the presence of intervening circumstances, (3) the purpose and flagrancy of the misconduct, and (4) whether it is likely that the evidence would have been obtained without the illegality. *State v. Sickels*, 275 N.W.2d 809, 814 (Minn. 1979). No single factor is dispositive. *State v. Bergerson*, 659 N.W.2d 791, 797 (Minn. Ct. App. 2003) (citing *State v. Weekes*, 268 N.W.2d 705, 709 (Minn. 1978) ("*Weekes II*")).

But the court of appeals held that Mr. Engel's flight should not be suppressed due solely to that court's view of the "intervening circumstance" factor. *State v. Engel*, 18

N.W.3d 540, 550 (Minn. Ct. App. 2025), *review granted* (June 17, 2025). In doing so, the court relied on a blanket rule from *City of St. Louis Park v. Berg*, providing that evidence of the defendant committing a new crime could not be excluded as fruit of the poisonous tree. 433 N.W.2d 87, 90 (Minn. 1988). But *Berg* and the other cases on which the court of appeals relied are readily distinguishable. They involved violent police assault, physical resistance, and threatening obstruction to legal process. *See Engel*, 18 N.W.3d at 550 (citing *State v. Ingram*, 570 N.W.2d 173, 178–79 (Minn. Ct. App. 1997); *State v. Wick*, 331 N.W.2d 769, 771 (Minn. 1983); *State v. Hoagland*, 270 N.W.2d 778, 780–81 (Minn. 1978)). Mr. Engel did nothing of the sort. Rather, he simply directed the officer to follow him so he could safely stop ahead. This was a reasonable attempt to control the circumstances of the illegal seizure, akin to the defendants in *State v. Bergerson*, 659 N.W.2d 791 (Minn. Ct. App. 2003) and *State v. Davis*, 910 N.W.2d 50 (Minn. Ct. App. 2018). In *Bergerson* and *Davis*, the defendants actually fled police to avoid illegal seizures, yet evidence against them was suppressed.

Mr. Engel's case shows why the contextual four-factor test is appropriate, and why a blanket rule prohibiting suppression is a poor fit, for cases of "mere flight" that facilitate a safe police stop. Mr. Engel merely sought to move an illegal late-night traffic stop from a dark rural road to a well-lit location with witnesses. Mr. Engel's actions were particularly understandable in light of recent police abuses committed against Water Protectors like him—not to mention the very public deaths of George Floyd, Philando Castile, and Daunte Wright during police seizures. *Berg* and the other cases on which the court of appeals relied

do not require a blanket rule against suppressing evidence in that circumstance, but if they did they should be reconsidered and abrogated.

Cases in Maryland and the District of Columbia show that courts can and should distinguish between controlled flight like Mr. Engel's and more violent forms of "self-help" against illegal searches and seizures using the balancing test. *See, e.g.*, *Thornton v. State*, 214 A.3d 34, 51–52 (Md. Ct. App. 2019); *Johnson v. United States*, 253 A.3d 1050, 1057–61 (D.C. 2021); *United States v. Brodie*, 742 F.3d 1058, 1062–64 (D.C. Cir. 2014).

Applying the customary *Weekes* factors to evidence of flight from an illegal stop would allow courts to recognize cases, such as this one, where Minnesotans merely seek non-violent ways to mitigate the harms of illegal searches and seizures. This flexible approach to applying the exclusionary rule could lower the temperature of illegal stops and may help deter unconstitutional traffic stops, like Mr. Engel's, in the first place. The citizens of Minnesota are entitled to that broad protection under Article 1, Section 10 of the Minnesota Constitution.

ARGUMENT

I. This Court's Traditional Balancing Test, Rather than a Blanket Rule Against Suppression, Is the Right Way To Determine Whether Evidence of "Mere Flight" Should Be Suppressed Following an Illegal Search or Seizure.

Typically, this Court has used a four-factor test to decide whether evidence following an unconstitutional search or seizure has become too "attenuated" to be suppressed as the fruit of the poisonous tree. This test considers (1) the temporal proximity of the illegality and the evidence alleged to be the fruit of that illegality; (2) the presence of intervening circumstances; (3) the purpose and flagrancy of the misconduct; and (4)

whether it is likely that the evidence would have been obtained without the illegality. *Sickels*, 275 N.W.2d at 814 (citations omitted); *see also Bergerson*, 659 N.W.2d at 797; *Weekes II*, 268 N.W.2d at 708–09. Critically, no single factor is dispositive. *Bergerson*, 659 N.W.2d at 797 (citing *Weekes II*, 268 N.W.2d at 709). This balancing test ensures that the right of Minnesota citizens to be free from unreasonable searches and seizures is determined on the individual facts of each case, not a one-size-fits-all approach. That test, rather than a rule that automatically denies motions to suppress when a suspect allegedly commits a crime in response to unconstitutional police conduct, is the right test for this case.

A. This Court's Decisions Involving Dangerous Conduct in Response to Illegal Searches and Seizures Do Not Warrant a Blanket Rule in Cases of "Mere Flight."

In deciding Mr. Engel's case, the court of appeals majority analyzed only one *Weekes* factor: whether Mr. Engel's "flight" was an intervening circumstance. *Engel*, 18 N.W.3d at 552. Relying solely on cases involving physical resistance to an illegal stop or seizure—*Berg*, *Wick*, and *Ingram*—the court of appeals applied *Berg*'s blanket rule that "evidence of a defendant committing a new crime in response to unconstitutional police conduct—such as fleeing police, resisting arrest, or assaulting a police officer—constitutes intervening circumstances that" ***per se*** "purge the subsequent conduct from the taint of the unlawful seizure." *Id.* at 550 (citations omitted). Citing *Berg*, the court of appeals held that Mr. Engel's mere flight was an intervening circumstance that eliminated the taint of the unlawful stop. *Id.* at 552. As part of its reasoning, the court of appeals cited *Hoagland*'s

ruling that "individuals are not allowed to resort to self-help to resolve a dispute concerning an unlawful search or seizure." *Id.* at 552 (citing *Hoagland*, 270 N.W.2d at 780–81).

Mr. Engel's conduct here is dramatically different from the defendants' conduct in the cases on which the court of appeals relied: active physical resistance in *Ingram*, 570 N.W.2d at 178–79, alleged punching and eye-poking of police officers in *Berg*, 433 N.W.2d at 88, and alleged grabbing of an officer to "sw[i]ng him around in the hall" in *Wick*, 331 N.W.2d at 771. Moreover, *Berg* and *Wick* do not even analyze the protections available under Article 1, Section 10 of the Minnesota Constitution, but limit their analysis to the Fourth Amendment. *See generally Berg*, 433 N.W.2d 89-91; *Wick*, 331 N.W.2d 771. Therefore, they are distinguishable on both facts and law.

Berg in particular highlights exactly why a blanket rule against suppression is not warranted in cases where the suspect's actions are limited to delaying an illegal traffic stop. In *Berg*, the police illegally entered the home where the defendant was staying, and what happened next was in "sharp dispute." *Berg*, 433 N.W.2d at 88. Berg's parents and sister testified that Berg hid under a bed, the officers climbed on top of it, caused the bedframe to collapse on Berg, and then beat him so badly with a flashlight or nightstick that they stained a nearby wall with his blood. *Id.* Officers, in contrast, testified that Berg attacked them after they pulled him out from underneath the bed. *Id.* The trial court suppressed the officers' statements about Berg's alleged resistance, finding them "'particularly unsatisfactory' and, in some respects, 'patently unbelieveable.'" *Id.* at 88–89.

This Court, analyzing the Fourth Amendment only, held that the police statements should not be suppressed. *Id.* at 90. The Court concluded that the case involved "a

defendant's resistance to an illegal arrest." *Id.* at 89. In such a case, the Court held, "[t]he deterrence of unlawful police conduct, which is the basis for the exclusionary rule, must yield to countervailing concerns." *Id.* at 90. The Court was particularly focused on the violence that could arise from a defendant's resistance: "To exclude evidence of a defendant's assaultive response to a Fourth Amendment violation," the Court said, "would be a license for defendants to assault police officers, even to murder them." *Id.* To avoid such outcomes, "the legality of an arrest is to be decided in a courtroom," not during the stop itself. *Id.* at 91 (citing *Hoagland*, 270 N.W.2d at 780).

Justice Wahl dissented. She urged the Court to reject per se rules barring the exclusion of evidence, and to instead endorse a test that would consider each case on its own merits. *See id.* at 92–93 (Wahl, J., dissenting). Additionally, Justice Wahl found Berg's alleged "attack" on the officers "directly related" and therefore in the "simplest category of exclusionary rule cases" that ought to be suppressed. *Id.* at 92 (quoting 4 W. LaFave, *Search and Seizure*, § 11.4 at 369 (2d ed. 1987)). "The more direct the causal link between the police misconduct and the relevant evidence is the more *predictable* it becomes that such misconduct will lead to the discovery of such evidence." *Id.* at 92 n.2 (emphasis added). Amici respectfully submit that Justice Wahl was correct, and that the four-factor *Weekes* test should be applied in every case where the state argues that evidence at issue in a motion to suppress was attenuated from the illegal police misconduct. Thus, this Court should consider abrogating or overruling *Berg*.

But even assuming *Berg* was correctly decided, neither its holding nor its logic apply where the defendant responded to illegal police conduct not by assaulting the police,

but instead by trying to *de-escalate the situation*. Unlike in *Berg*, there is no evidence here that Mr. Engel was violent or ever intended to prevent the police from carrying out the traffic stop. Rather, Mr. Engel temporarily "fled" to a safer place for the stop to occur. Not only was Mr. Engel's flight an entirely "predictable" response to an illegal police stop on a dark road late at night, by directing the police to a better-lit and more-traveled location, he took actions that equally protected himself and the officers. Mr. Engel's nonviolent actions were particularly reasonable in light of other police seizures in Minnesota that have led to the detainee's death, including George Floyd,[2] Philando Castile,[3] and Daunte Wright.[4] All died pursuant to police seizures. Two of them, Castile and Wright, were fatally shot during traffic stops,[5] with Castile encountering police at 9 P.M. at night.[6]

Hoagland's rule against "self-help" is inapplicable for similar reasons. There, the defendants were convicted of obstructing legal process for threatening violence against game wardens who had entered their property. *Hoagland*, 270 N.W.2d at 780. This Court

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[2] Press Release, U.S. Department of Justice, THREE FORMER MINNEAPOLIS OFFICERS CONVICTED OF FEDERAL CIVIL RIGHTS VIOLATIONS FOR DEATH OF GEORGE FLOYD (Feb. 24, 2022), https://www.justice.gov/archives/opa/pr/three-former-minneapolis-police-officers-convicted-federal-civil-rights-violations-death.

[3] MPR News Staff, TIMELINE: THE SHOOTING DEATH OF PHILANDO CASTILLE, MPR News, July 10, 2016, https://www.mprnews.org/story/2016/07/07/timeline-philando-castile-shooting.

[4] Amy Fortliti et al., JUDGE SENTENCES MINNEAPOLIS POLICE OFFICER WHO KILLED DAUNTE WRIGHT TO 2 YEARS, PBS, Feb. 18, 2022, https://www.pbs.org/newshour/nation/judge-sentences-minneapolis-police-officer-who-killed-daunte-wright-to-2-years.

[5] Courtney Vinopal, WHAT WE KNOW ABOUT DAUNTE WRIGHT'S KILLING, AND WHAT IT SAYS ABOUT POLICING IN AMERICA, PBS, Apr. 14, 2021, https://www.pbs.org/newshour/nation/what-we-know-about-daunte-wrights-killing-and-what-it-says-about-policing-in-america.

[6] TIMELINE: THE SHOOTING DEATH OF PHILANDO CASTILLE, *supra* note 3.

held that not only was the warrantless search legal—contrary to what the defendants believed—but that the defendants could not threaten violence merely because they mistakenly believed the search was illegal. *Id.* In making that determination, the Court noted that

> The development of legal safeguards in the Fourth, Fifth, Sixth and Fourteenth Amendment fields *in recent years* has provided the victim of an unlawful search with realistic and orderly legal alternatives to physical resistance.

Id. at 781. (citation omitted) (emphasis added). *Hoagland* was decided in 1978, and its reference to safeguards developed "in recent years" likely referred to federal cases like *Mapp* in 1961 and *Brown* in 1975. As explained below, those very developments have been steadily undone for the last 60 years. But regardless, Mr. Engel's "self-help," which was limited to ensuring that an illegal traffic stop would occur at a safe location, had almost nothing in common with the violent threats against the lawful actions of game wardens in *Hoagland*.

The enormous factual differences between cases like *Berg* and *Hoagland*, on the one hand, and this case, on the other, confirm that cases of mere flight should be analyzed on their facts, using the *Weekes* factors. An automatic rule, foreclosing the suppression of evidence whenever a suspect allegedly does anything unlawful in response to unconstitutional police behavior, is not required by either the holdings or reasoning of this Court's prior cases.

B. This Court Should Ensure that the Minnesota Constitution Independently and Vigorously Safeguards the Right Against Unreasonable Search and Seizure.

Broader state constitutional law principles cut in favor of applying the contextual *Weekes* test, rather than the automatic *Berg* rule, when a suspect temporarily flees in response to an unconstitutional search or seizure. Minnesota courts have for nearly 30 years recognized that Article I, Section 10 provides Minnesotans greater constitutional protections than does the Fourth Amendment. *See State v. Leonard*, 943 N.W.2d 149, 156 (Minn. 2020). The United States and Minnesota Supreme Courts have acknowledged that "state constitutions are a separate source of citizens' rights" and that "state courts may reach conclusions based on their state constitutions, independent and separate from the U.S. Constitution." *Kahn v. Griffin*, 701 N.W.2d 815, 824 (Minn. 2005) (citing *Michigan v. Long*, 463 U.S. 1032, 1041 (1983)).

As Justice Brennan said: "The strength of our [federal] system is that it 'provides a double source of protection for the rights of our citizens.'" William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. Rev. 535, 552 (1986) (internal quotation omitted). This Court has long held that it is "independently responsible for safeguarding the rights of [its] citizens" and "should be the first line of defense for individual liberties within the federalist system." *Fuller*, 374 N.W.2d at 726. The Court recognizes that "[i]n all cases, [it] employ[s] . . . independent judgment in interpreting the Minnesota Constitution." *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 157 (Minn. 2017) (citation omitted).

As *Marbury v. Madison* recognized, "every right, when withheld, must have a remedy." 5 U.S. 137, 147 (1803). *See also Davis v. Pierse*, 7 Minn. 13, 18 (1862) (explaining that no right enshrined in the Minnesota Constitution, "is more sacred to the citizen, or more carefully guarded by the constitution, than the right to have a certain and prompt remedy in the laws for all injuries or wrongs to person, property, or character."). Otherwise, the prohibition against unreasonable searches and seizures would have no practical meaning. The U.S. Supreme Court held that without the exclusionary rule, the Fourth Amendment "might as well be stricken from the Constitution." *Weeks v. United States*, 232 U.S. 383, 393 (1914), *overruled on other grounds by Elkins v. United States*, 364 U.S. 206 (1960). And while federal case law has distanced itself from this first principle (see below), this Court must continue to "independently safeguard for the people of Minnesota the protections embodied in our constitution," *Leonard*, 943 N.W.2d at 158, by applying the *Weekes* factors to cases of mere flight. The court of appeals' failure to do so improperly turned Section 10 of the Minnesota Constitution into a right without a remedy.

1. The Exclusionary Rule—and, by Extension, the Fruit of the Poisonous Tree Doctrine—Is a Bulwark for Protecting Individuals' Rights from Unconstitutional Police Conduct.

Since 1914—over a century—the primary remedy for the violation of a criminal defendant's Fourth Amendment rights has been the exclusionary rule, which suppresses or excludes illegally-obtained evidence. *See Weeks*, 232 U.S. at 393. In *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920), the Supreme Court expanded the exclusionary rule to include tangible evidence that the Government had obtained indirectly

as the result of an unconstitutional search. In that case, the Government illegally seized and made copies of documents that the district court eventually suppressed. *Id.* at 390–91. The Government then sought a new indictment based on the information it had obtained in the illegally seized documents and subpoenaed the original documents from the defendant. *Id.* at 391.

The U.S. Supreme Court found the Government's Fourth Amendment workaround—the new indictment based on evidence it learned of in the illegally seized documents—unconstitutional and that it "reduce[d] the Fourth Amendment to a form of words" *Id.* at 392. The Court rejected the Government's argument that "the protection of the Constitution covers the physical possession but not any advantages that the Government can gain over the object of its pursuit by doing the forbidden act." *Id.* It reasoned:

> The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court but that it shall not be used at all. . . . the knowledge gained by the Government's own wrong cannot be used by it in the way proposed.

Id. (emphasis added). By 1963 in the seminal *Wong Sun v. United States*, 371 U.S. 471, 484–88 (1963), the Court applied *Silverthorne*'s reasoning to suppress verbal evidence uttered during an unlawful arrest, dubbing the statements "fruit of the poisonous tree," the doctrine which is now central to Fourth Amendment jurisprudence and to this case. *Id.* at 488.

Contemporaneously with *Wong Sun*, the exclusionary rule reached its zenith when the Court expanded the protections of the Fourth Amendment, incorporating them against

the states. *Elkins*, 364 U.S. at 223 (incorporating the Fourth Amendment); *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (incorporating the exclusionary rule). *Mapp* went a step further, holding that the exclusionary rule was so essential to the Fourth and Fourteenth Amendments that it was "constitutional in origin." 367 U.S. at 648–649, 660.

2. Federal Law Has Retreated from the Exclusionary Rule.

As noted above, given that there is no controlling federal case law on the issue presented here, and given that this implicates unique aspects of the Minnesota Constitution (especially its remedies clause), this Court need not decide whether, in general, there is a "principled basis" to interpret the exclusionary rule under the Minnesota Constitution more broadly than it has been interpreted under the U.S. Constitution. *See Leonard*, 943 N.W.2d at 157 n.9 (citations omitted) (interpreting *Kahn*, 701 N.W.2d at 824). But, in fact, there is.

Since *Mapp*, the U.S. Supreme Court has engaged in a "gradual but determined strangulation of the [exclusionary] rule." *United States v. Leon*, 468 U.S. 897, 928–29 (1984) (Brennan, J., dissenting). In *United States v. Calandra*, 414 U.S. 338, 348 (1974), it retreated from its holding in *Mapp* by declaring that the exclusionary rule was merely a judicially created remedy that Congress could legislate around. Even worse, the Court also reimagined the "prime purpose" of the exclusionary rule as merely "deter[ring] future unlawful police conduct" rather than remedying the constitutional violations suffered by a defendant. *Id.* at 347.

Wong Sun's fruit of the poisonous tree doctrine fared no better as the Supreme Court worked to integrate the attenuation exception into the exclusionary rule. First conceived of in *Nardone v. United States*, 308 U.S. 338, 341 (1939), the attenuation exception forbids

suppression under the exclusionary rule if the "connection [between the illegal police conduct and seizure of the evidence] may have become so attenuated as to dissipate the taint [of the illegal search]." Though the Fourth Amendment was at its most robust in the 1960s, cracks were already apparent thanks to the attenuation exception. *Wong Sun* itself relied on *Nardone* to hold that a voluntary confession given several days after the defendant was released from an illegal arrest could not be suppressed. 371 U.S. at 491 (quoting *Nardone*, 308 U.S. at 341).

For a while, the dam held, notwithstanding that crack. Analyzing *Wong Sun*'s distinct holdings about the differing contexts surrounding the defendants' statements, *Brown v. Illinois* established a balancing test to determine whether the attenuation exception applied: (1) the temporal proximity between the unconstitutional conduct and the discovery of evidence, (2) the presence of intervening circumstances, and (3) the purpose and flagrancy of the official misconduct. *Brown v. Illinois*, 422 U.S. 590, 604 (1975) (citing *Wong Sun*, 371 U.S. at 491). Using that balancing test, *Brown* held that *Miranda* warnings, by themselves, do not always under *Wong Sun*, purge the taint of an illegal arrest under *Wong Sun*. *Id.* at 605.

Shortly thereafter in *Leon*, 468 U.S. at 903, the Supreme Court adopted the "good faith exception" to the exclusionary rule. The new exception permitted the admission of evidence seized pursuant to a search warrant lacking probable cause because the police officers had "reasonably rel[ied] on a warrant issued by a detached and neutral magistrate." *Id.* at 926. *Leon*'s good faith exception kicked off a series of additional retrenchments over the next 40 years. *See, e.g.*, *Illinois v. Krull*, 480 U.S. 340, 360 (1987) (extending good

faith exception to an officer's reliance on a statute authorizing warrantless administrative searches that was later held unconstitutional); *Arizona v. Evans*, 514 U.S. 1, 15–16 (1995) (extending good faith exception to an officer's reliance on mistaken information in a court's database); *Herring v. United States*, 555 U.S. 135, 147–48 (2009) (extending good faith exception for police reliance on an inaccurate law enforcement recordkeeping system); *Davis v. United States*, 564 U.S. 229, 241 (2011) (extending good faith exception to officer's "reasonable reliance on binding judicial precedent" later overturned).

The Supreme Court itself summarized the effect of these retrenchments: "the significant costs of this rule have led us to deem it 'applicable only . . . where its deterrence benefits outweigh its substantial costs'" to society, *Utah v. Strieff*, 579 U.S. 232, 237 (2016) (citation omitted), by "setting the guilty free and the dangerous at large." *Hudson v. Michigan*, 547 U.S. 586, 591 (2006). The Court admitted, "[w]e did not always speak so guardedly" and declared the wide scope of the exclusionary rule announced in *Mapp* "[e]xpansive dicta." *Id.*

These cases chart the Supreme Court's "shift[] from viewing suppression as an intrinsic part of the Fourth Amendment to concerns about the social costs of the exclusionary rule." Karen McDonald Henning, *"Reasonable" Police Mistakes: Fourth Amendment Claims and the "Good Faith" Exception After* Heien, 90 St. John's L. Rev. 271, 289–90 (2016). This shift has deprived federal defendants of "a remedy necessary to ensure that [Fourth Amendment] prohibitions are observed in fact." Potter Stewart, *The Road to* Mapp v. Ohio *and Beyond: The Origins, Development and Future of the Exclusionary Rule in Search-and-Seizure Cases*, 83 Colum. L. Rev. 1365, 1389 (1983).

Unsurprisingly, this retrenchment also affected how the fruit of the poisonous tree doctrine was viewed. In 2006, the Supreme Court found that a violation of the knock and announce requirement did not require the suppression of evidence found pursuant to that search. *Hudson*, 547 U.S. at 594. The Court even boldly announced that "attenuation also occurs when, *even given a direct causal connection*, the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained." *Id.* at 593 (emphasis added). The Court reasoned that because the knock and announce requirement did not protect a person's interest in preventing the government from seizing the evidence described in the warrant, the exclusionary rule did not apply *at all*. *Id.* at 594.

Then, in 2016, *Utah v. Strieff* contorted the *Brown* attenuation factors to find that an unrelated outstanding arrest warrant for an unpaid parking ticket was sufficient to break the causal chain between an illegal stop and the evidence found thereafter. *See* 579 U.S. at 242. In short, *Strieff* allows

> the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants—even if you are doing nothing wrong. If the officer discovers a warrant for a fine you forgot to pay, courts will now excuse his illegal stop and will admit into evidence anything he happens to find by searching you after arresting you on the warrant.

Id. at 244 (Sotomayor, J., dissenting). Such fruit of the poisonous tree will not be suppressed under today's federal attenuation doctrine. Although "every right, when withheld, must have a remedy," *Marbury*, 5 U.S. at 147, that is not the reality for Fourth Amendment violations any longer.

3. Minnesota Has a Long Tradition of Rejecting the Erosion of the Exclusionary Rule.

This Court has resisted the retrenchment of the exclusionary rule as inconsistent with the Minnesota Constitution. In *State v. Zanter*, the State urged this Court to adopt *Leon*'s good faith exception for a facially valid warrant that was later found to be lacking probable cause. 535 N.W.2d 624, 634 (Minn. 1995) (citing *Leon*, 468 U.S. 897). This Court refused because the police's good faith in executing the warrant did not change the requirements of Article 1, Section 10 of the Minnesota Constitution. *Id.* This Court refused again to adopt a good faith exception in *Garza v. State* for a no-knock warrant that was later found to be invalid. 632 N.W.2d 633, 640, 638 (Minn. 2001). That is, this Court's "repeated refusal to recognize the good-faith exception to the exclusionary rule, together with Minn. Stat. § 626.21 (2014), establish[ed] a Minnesota 'tradition' that is not consistent with the application of the good-faith exception . . . ." *State v. Lindquist*, 869 N.W.2d 863, 879 (Minn. 2015) (Gildea, J., dissenting).

This Court relented—and only minimally—in *Lindquist* where it adopted the good faith exception articulated in *Davis*, 564 U.S. at 241, where "law enforcement acts in objectively reasonable reliance on binding appellate precedent." *Lindquist*, 869 N.W.2d at 876. In doing so, this Court made clear exactly how limited the ruling was, stating that it was adopting only "a small fragment of federal good-faith jurisprudence," and the "narrowness of [its] holding" counsels against expanding the exception beyond those facts. *Id.*

This Court has stuck to that prescription, declining to extend *Lindquist* to a good faith exception related to a suspicionless search of a hotel registry in *Leonard*, 943 N.W.2d at 161. Just last year, this Court again declined to extend the good faith exception to a quashed warrant that appeared active due to a court administration error. *State v. Malecha*, 3 N.W.3d 566, 578 (Minn. 2024). The Court should continue that trend and reaffirm the *Weekes* factors for cases involving "flight."

This Court's decision here is particularly important in light of the bad precedent set by *Berg*. As the court of appeals recognized, only this Court can narrow that precedent to require suppression of evidence of mere flight. *Id.* And it should. *Berg* considered only the Fourth Amendment, not the broader protections of the Minnesota Constitution and its expansive remedies clause. Even worse, *Berg* effectively revived discredited police testimony to support its holding, wildly finding that the police's physical beating of Berg was not "exploitation" of an illegal search and seizure. *Berg*, 433 N.W.2d at 90. *Berg* wholly failed to take into account the importance of the remedies clause or acknowledge the grave harms violent police behavior and "exploitation" of unlawful searches and seizures, as here, inflicts on Minnesota citizens. Instead of making people less likely to not comply with law enforcement, *Berg* encourages it—without remedy people will resort to "self-help" for protection. And that is exactly what Mr. Engel's self-help was here: an effort to protect himself amid a string of abuses from police on the Enbridge Line 3 Pipeline.

Mr. Engel's case demonstrates why under Article 1, Section 10 of the Minnesota Constitution cases of mere flight must be analyzed using all of the *Weekes* factors, not the *Berg* blanket rule. The purpose of the exclusionary rule is to provide a remedy for unlawful

government behavior, not just to deter police misconduct. *See Malecha*, 3 N.W.3d at 578 ("Thus, in addition to the central object of deterring unlawful police conduct, we recognize other purposes served by exclusion, including the related goal of more generally deterring unlawful government conduct."). That remedy should include not forcing Minnesotans to go through the expense and pain of trial for engaging in non-dangerous flight as a way to comply with police orders to stop while still protecting their right to be free from illegal searches and seizures under the Minnesota Constitution. Therefore, this Court should apply the *Weekes* factors to cases of mere flight, particularly in relation to fleeing-peace-officer charges.

C. The Decisions of Other Courts Also Counsel Against a Blanket Rule Prohibiting the Suppression of Evidence Involving Mere Flight.

Case law from other states provides a potential roadmap for how this Court should apply the *Weekes* factors to cases involving "flight." In *Thornton v. State*, in which the defendant fled on foot following an illegal frisk, the Maryland Court of Appeals held that "where an individual attempts to flee from an unlawful *Terry* frisk, whether the individual's act purges the taint of the Fourth Amendment violation must be analyzed on a case-by-case basis by balancing the factors set forth in *Brown*." 214 A.3d 34, 52 (Md. App. Ct. 2019) (citation omitted). The court reasoned that "[t]o hold otherwise would effectively create a bright line rule that would contravene *Brown*, and it would allow flagrant and purposeful police misconduct to go unchallenged." *Id.* (citation omitted). Of course, that is what *this* Court risks by affirming the court of appeals decision. The Maryland court applied the *Brown* factors in favor of suppression. Critical to that analysis was the fact that the officers

had "embarked upon this expedition for evidence in the hope that something might turn up," which is "precisely the sort of police misconduct in most need of deterrence, thereby appealing to the primary purpose behind the exclusionary rule." *Id.* at 56 (citations omitted). Though the court "emphatically" did not condone the defendant's flight, the court found the police's illegal pursuit, and the defendant's reflexive "non-violent, non-aggressive" conduct as weighing in favor of suppression. *Id.*

The same analysis occurred in two cases in Washington, D.C.: *United States v. Brodie* and *Johnson v. United States*. As in *Thornton*, defendants in both cases fled on foot. *Brodie*, 742 F.3d at 1063; *Johnson*, 253 A.3d at 1054. In *Brodie*, the court analyzed the *Brown* factors and found the defendant's flight on foot was not an intervening circumstance because the defendant was not forcibly resisting arrest and his flight posed no serious risk to public safety (in contrast to a high-speed car chase). *See Brodie*, 742 F.3d at 1063. Relying on *Brodie*, in part, under similar facts and analyzing the *Brown* factors, the D.C. Court of Appeals in *Johnson* also found that mere flight on foot was not an intervening circumstance and suppressed the fruit-of-the-poisonous-tree evidence. 253 A.3d at 1058–59.

This Court should follow the lead of these jurisdictions and apply all of the *Weekes* factors to conduct a case-by-case analysis when a person has fled. While neither *Thornton* nor *Brodie* dealt with suppression of evidence of flight itself, the reasoning remains the same. Like these cases, Mr. Engel's "flight" was a direct result of the unlawful actions by the police officer as he was responding to his illegal stop. Additionally, despite being in a car, Mr. Engel did not pose any serious public safety risk. He maintained a slow speed,

with his hazard lights on, and remained in communication with the officers. This is much the same level of public safety risk as someone fleeing an officer on foot poses. With a proper balancing of the facts, Minnesota courts can properly deter flagrant police conduct and ensure a remedy for its citizens from illegal searches and seizures without the worry that they are encouraging a defendant to engage in dangerous behavior. Therefore, evidence of Mr. Engel's flight can and should be suppressed.

II. Mr. Engel's Case Highlights Why Mere Flight Does Not Warrant a Blanket Rule Prohibiting the Suppression of Evidence.

As applied to Mr. Engel's case, the *Weekes* factors warrant suppression of the evidence of his "flight."

A. Mr. Engel's Efforts to Control the Circumstances of His Seizure Were Not an Intervening Circumstance.

First, Mr. Engel's conduct and the context of the stop militates against a finding that Mr. Engel's "fleeing" was intervening. Mr. Engel relied on *Bergerson* for good reason: it is the jumping off point for this Court to correctly apply the *Weekes* factors to evidence of mere flight in relation to a fleeing-peace-officer charge.

Bergerson also featured an illegal traffic stop in which the defendant continued driving for a mile before abruptly stopping and fleeing from police through a ditch. *Bergerson*, 659 N.W.2d at 794. During a pat search, the police found a substance that later tested positive for methamphetamine. *Id.* Bergerson was charged with a controlled substance crime and with fleeing a peace officer. *Id.* A critical difference between *Bergerson* and this case is that police found no controlled substances on Mr. Engel and

Bergeson's fleeing-peace-officer charge was dismissed.[7] *See id.* Analyzing the *Weekes* factors in *Bergerson*, the court of appeals found the controlled substance was fruit of the poisonous tree and should be suppressed. *Id.* at 799.

Critical to this analysis, the court determined that "Bergerson's flight, without physical resistance, did not present an intervening circumstance sufficient to purge the taint of illegality." *Id.* at 798. The court went further, rejecting the State's argument that mere flight should be construed as physically resisting arrest under *Ingram*. *Id.* The court reasoned that *Ingram*, while finding that physically resisting arrest should not be suppressed, also made the distinction that "fleeing and attempting to dispose of contraband is a 'predictable and common response' to an illegal search that warrants suppression of the evidence." *Id.* (citing *State v. Olson*, 634 N.W.2d 224, 230 (Minn. Ct. App. 2001) (quoting *Ingram*, 570 N.W.2d at 178)). So it was with Bergerson's mere flight with contraband; it was predictable, and therefore evidence of the contraband was suppressed. *Id.*

Here, there is no contraband to suppress—only the evidence is Mr. Engel's "flight" itself. Failing to suppress it would punish Mr. Engel for being *more law abiding than* Bergerson under similar police conduct. Additionally, Mr. Engel's "fleeing" from the police to get to an area with more light and witnesses—particularly as he gestured and encouraged the officer to follow him so that the police can initiate the stop—is a predictable

[7] Bergerson entered a stipulated facts *Lothenbach* not guilty plea. *Id.* at 794.

and reasonable result of a police stop.[8] Mr. Engel's conduct here is fully distinguishable from the defendants' conduct in the cases the court of appeals majority relied on. Thus, Mr. Engel's flight was not an intervening circumstance.

B. The Police Conduct Was Flagrant.

An analysis of the other factors also favors suppression. In analyzing "flagrancy" of police misconduct, this Court has found that police conduct need not be dramatic to be "flagrant." Essentially, a seizure absent probable cause is "flagrant" enough to trigger suppression. For example, *Weekes I* declared that police action is considered flagrant when it is "clear that [the] defendant was taken into custody and confined without a warrant and without probable cause" because "absent probable cause there is not and never has been any lawful basis for holding a person for investigation or on suspicion." 250 N.W.2d at 594.

This Court also found the following police conduct "flagrant" in context of a defendant's unlawful arrest in *State v. McDonald-Richards*: (1) defendant's unlawful arrest, (2) being given a *Miranda* warning, (3) two hours of confinement, and (4) "non-confrontational" police interrogation. 840 N.W.2d 9, 17 (Minn. 2013). The court of appeals also found "flagrant" and "blatantly offensive" the police's road-side handcuffing and detention of a fleeing passenger during a traffic stop (failure to signal turn) in a North

[8] Indeed, the Minnesota DVS Driver's Manual directs drivers to "pull to the right shoulder as soon as safely possible" when stopped by police. Minn. Driver & Vehicle Servs., *Minnesota Driver's Manual* (May 2025), https://s3.us-east-2.amazonaws.com/assets.dps.mn.gov/s3fs-public/dvs-class-d-drivers-manual-english.pdf.

Minneapolis residential neighborhood in "broad daylight." *State v. Davis*, 910 N.W.2d 50, 53–55 (Minn. Ct. App. 2018).

Here also, the illegal stop that was done to investigate whether Mr. Engel's license tags were truly expired is precisely the type of flagrant, suspicionless, investigatory stop that the exclusionary rule is intended to prevent. *See also State v. Hardy*, 577 N.W.2d 212, 217 (Minn. 1998) ("the primary purpose of the exclusionary rule is to deter police misconduct" by eliminating temptation for police officer to act unconstitutionally). Therefore, the flagrancy of the police conduct in cases of mere flight like Mr. Engel's warrants suppression.

C. Mr. Engel's "Flight" Would Not Have Been Discovered If Not for His Illegal Seizure, and the Evidence and Seizure Were Temporally Close.

In Mr. Engel's case, it is also unlikely that the police would have obtained the at-issue evidence without the illegal stop. Had the officer not triggered his lights, Mr. Engel would have continued lawfully driving to his destination, uninterrupted. Likewise, the so-called "flight" took place immediately after the unlawful stop. *See Olson*, 634 N.W.2d at 229 ("A close temporal proximity favors exclusion."); *Berg*, 433 N.W.2d at 92 (Wahl, J., dissenting) ("When resistance to an unconstitutional use of force is not only direct but predictable that resistance can only be considered a directly caused product of the excessive force."). Thus, all factors weigh in favor of suppression in of Mr. Engel's mere flight.

CONCLUSION

For the foregoing reasons, this Court should hold that the *Weekes* attenuation balancing test for fruit of the poisonous tree applies to evidence of "mere flight" in relation to fleeing-peace-officer charges under Article 1, Section 10 of the Minnesota Constitution.

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Respectfully submitted,

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