Nos. 24-5612, 24A290

IN THE

Supreme Court of the United States

PROSECUTING ATTORNEY, 21ST JUDICIAL CIRCUIT,
EX. REL. MARCELLUS WILLIAMS,

Petitioners,

-versus-

STATE OF MISSOURI,

Respondent.

On Petition for Writ of Certiorari to the
Supreme Court of Missouri

Emergency Application for A Stay of Execution

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER'S EMERGENCY APPLICATION FOR A STAY OF EXECUTION

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INTEREST OF AMICUS CURIAE[1]

Founded in 1940 by Justice Thurgood Marshall, the NAACP Legal Defense & Educational Fund, Inc. ("LDF") is the nation's first and foremost civil rights law organization. Through litigation, advocacy, public education, and outreach, LDF strives to secure equal justice under the law for all Americans, and to break down barriers that prevent African Americans from realizing their basic civil and human rights.

LDF has a long-standing concern with the influence of racial discrimination on the criminal justice system in general, and on jury selection in particular. We represented the defendants in, *inter alia*, *Swain v. Alabama*, 380 U.S. 202 (1965), *Alexander v. Louisiana*, 405 U.S. 625 (1972) and *Ham v. South Carolina*, 409 U.S. 524 (1973); pioneered the affirmative use of civil actions to end jury discrimination, *Carter v. Jury Commission of Greene County*, 396 U.S. 320 (1970), *Turner v. Fouche,* 396 U.S. 346 (1970); and served as *amicus curiae* in *Batson v. Kentucky*, 476 U.S. 79 (1986), *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614 (1991), *Georgia v. McCollum*, 505 U.S. 42 (1992), *Miller-El v. Cockrell*, 537 U.S. 322 (2003), *Johnson v. California*, 545 U.S. 162 (2005), *Miller-El v. Dretke*, 545 U.S. 231 (2005), and *Flowers v. Mississippi*, 588 U.S. 284 (2019).

[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* state that no counsel for a party authored this brief in whole or in part and that no person other than amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In 2001, Juror No. 64 reported for jury duty ready and willing to serve. Instead, he was struck from Mr. Marcellus Williams' jury, along with five of the other seven Black venirepersons. For the 23 years since, the State maintained that it had non-racial reasons for striking this prospective juror. Last month, the trial prosecutor revealed for the first time that he struck Juror No. 64 because he was a young Black man.

Based on this new admission that race played a role in the selection of the jury that convicted Mr. Williams and sentenced him to death, this Court should stay Mr. Williams' execution and grant certiorari to resolve whether the State violated *Batson v. Kentucky*, 476 U.S. 79 (1986). There can be no better evidence of a *Batson* violation than the State's own admission that it struck a prospective juror based in part on his race. Allowing Mr. Williams to be executed based on a conviction tainted by racial discrimination in jury selection—particularly in this racially charged case where there is substantial evidence Mr. Williams is innocent—would profoundly undermine public confidence in this Court's commitment to "engage[] in 'unceasing efforts' to eradicate racial prejudice from our criminal justice system." *McClesky v. Kemp*, 481 U.S. 279, 309 (1987) (quoting *Batson*, 476 U.S. at 85).

ARGUMENT

I. Mr. Williams Has Presented New and Clear Evidence of a *Batson* Violation, Based on the Trial Prosecutor's Recent Admission that He Struck One Prospective Juror in Part Because He Was Black.

Less than one month ago, Mr. Williams obtained new and previously unavailable evidence showing that the St. Louis County Prosecuting Attorney

excluded at least one prospective juror from Mr. Williams' jury based on race. Finally placed under oath and subjected to adversarial process about his use of peremptory strikes, the original trial prosecutor admitted that he struck Juror No. 64 in part because he was Black. At trial, the prosecutor cited this prospective juror's purportedly similar demeanor, appearance, and clothing to Mr. Williams as one reason for the strike. *State of Missouri v. Williams*, 97 S.W.3d 462, 471–72 (Mo. 2003) (*en banc*). However, the trial prosecutor did not acknowledge that, by appearance, he was referring to race. And, on direct appeal, the Missouri Supreme Court specifically said that none of the reasons offered by the prosecutor was "inherently" based on the prospective juror's race. *Id.*

Now, twenty-three years later, the trial prosecutor acknowledged for the first time what he meant by their similar "demeanor" and "appearance": both Mr. Williams and Juror No. 64 were young Black men. App. 177a-178a. (Q: Okay. And so these were both young black men, right? [. . .] A: So he did look very similar to the defendant, yes. Q: (By Mr. Potts) And by that, they were both young black men, right? A: They were both young black men. . . . But that's not necessarily the *full reason* that I thought they were so similar.") (emphasis added); App. 179a. (Q: So you struck them because they were both young black men with glasses? A: . . . *That's part of the reason*.) (emphasis added).

This new testimony makes Mr. Williams' case the rare one in which the State has *conceded*—albeit belatedly—that race was a factor in a strike decision. There could be no better evidence of a *Batson* violation than the prosecutor's own testimony

that "part of the reason" he struck a prospective juror was that, like the defendant, he was a "young black m[a]n with glasses." That testimony shows the prosecutor's reasons for striking the prospective juror were not "race-neutral"; instead "discriminatory intent is inherent in the prosecutor's explanation" for the strike. *Hernandez v. New York*, 500 U.S. 352, 358–60 (1991) (plurality opinion). Indeed, earlier this year, the St. Louis County Prosecuting Attorney's Office sought to vacate the judgment against Mr. Williams based in part on the office's admitted violations of *Batson v. Kentucky*, 476 U.S. 79 (1986). App. 26a–88a. Any other conclusion would leave prosecutors' use of peremptory strikes "largely immune from constitutional scrutiny." *Batson*, 472 U.S. at 92–93.

The trial prosecutor's recent testimony is particularly concerning because it indicates that he struck Juror No. 64 based on an impermissible stereotype—that Juror No. 64 would be more likely to favor the defendant because they "were both young black men with glasses." App. 179a. This kind of insidious stereotype undermines our nation's most cherished and fundamental constitutional principles. As Justice Thurgood Marshall articulated in his concurring opinion in *Batson*,

> [e]xclusion of blacks from a jury, solely because of race, can no more be justified by a belief that blacks are less likely than whites to consider fairly or sympathetically the State's case against a black defendant than it can be justified by the notion that blacks lack the intelligence, experience, or moral integrity to be entrusted with that role.

472 U.S. at 104–05 (Marshall, J., concurring) (internal quotation marks and citations omitted); *see also Powers v. Ohio*, 499 U.S. 400, 416 (1991) (describing "[r]acial identity between the defendant and the excused person[s]" as relevant factor under

Batson that "may provide one of the easier cases to establish both a prima facie case and a conclusive showing that wrongful discrimination has occurred").

This Court forcefully reaffirmed these principles in *Flowers*. As Justice Kavanaugh explained the Equal Protection Clause "forbids the States to strike black veniremen on the assumption that they will be biased in a particular case simply because the defendant is black." *Flowers v. Mississippi*, 588 U.S. 284, 299 (2019) (quoting *Batson*, 472 U.S. at 97–98.). A contrary holding would render "[t]he core guarantee of equal protection . . . meaningless." *Batson*, 472 U.S. at 97–98.

The trial prosecutor's recent admission that he struck Juror No. 64 in part because he was a "young Black man" is troublingly consistent with the rest of his conduct during the selection of Mr. Williams' jury and other juries, and with his office's history of *Batson* violations—all factors that this Court has recognized as evidence of *Batson* violations. Not only did the State use six of its nine peremptory strikes (67% of the available strikes) against Black prospective jurors but it also struck all but one of the seven (86%) Black prospective jurors. These numbers alone "speak loudly." *See Flowers*, 588 U.S. at 305; *see also Miller-El v. Dretke*, 545 U.S. 231, 241 (2005) ("The prosecutors used their peremptory strikes to exclude 91% of the eligible African-American venire members. . . . Happenstance is unlikely to produce this disparity."). And the history of *Batson* violations by this prosecutor's office—including in two death penalty cases—demonstrate that the racially-motivated selection of juries was not an isolated problem, affecting only Mr. Williams. *See State*

v. McFadden, 216 S.W.3d 673, 674–77 (Mo. 2007) (*en banc*); *State v. McFadden*, 191 S.W.3d 648, 656–57 (Mo. 2006) (*en banc*).

But, even putting aside this other evidence, the prosecution's testimony from the August hearing leaves no doubt that Mr. Williams' capital sentence is premised on the violation of a "basic equal protection point: In the eyes of the Constitution, one racially discriminatory peremptory strike is one too many." *Flowers*, 588 U.S. at 298. This Court should not countenance a trial and death sentence so tainted by racial discrimination—discrimination that even the prosecuting office has belatedly conceded and unsuccessfully tried to remedy.

II. Racial Discrimination in Jury Selection Strikes at the Core Concerns of the Fourteenth Amendment and Implicates Fundamental Fairness.

A. The Right to Serve on a Jury Is Integral to Full American Citizenship

For decades, this Court has recognized that all citizens have a right not to be excluded from juries based on their race. *See Powers*, 499 U.S. at 407. Indeed, people who are "excluded from juries because of their race are as much aggrieved as those indicted and tried by juries chosen under a system of racial exclusion." *Carter v. Jury Comm'n of Greene Cnty.*, 396 U.S. 320, 329 (1970). This right is integral to our democracy because "[o]ther than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process." *Flowers*, 588 U.S. at 293 (citing *Powers*, 499 U.S. at 407). Accordingly, this Court's cases recognize and protect the rights of "potential jurors" as much as defendants. *J.E.B. v. Alabama ex rel.* T.B., 511 U.S. 127, 128 (1994).

Nevertheless, for the entire duration of our nation's history, state officials have denied Black people this "valuable opportunity to participate in a process of [G]overnment." *Powers*, 499 U.S.at 407 (citation omitted). Historically, Black people have been excluded from the rights and privileges associated with full citizenship in this country, and the right to participate in jury service is no exception.[2] Peremptory strikes have been a key tool in states' ongoing battle to undermine this Court's efforts to end such systemic exclusion. To this day, "the discriminatory use of peremptory challenges remains a problem." *Miller-El,* 545 U.S. at 268 (Breyer, J., concurring); see *id.* at 267–69 (collecting studies and evidence regarding persistence of discriminatory peremptory strikes). For example, in California, the Alameda County District Attorney's Office is now reviewing 35 death penalty cases after locating "handwritten notes by prosecutors which appear to show that they intentionally excluded Jewish and Black female jurors from the jury pool."[3] A 2018 study, examined 1,306 North Carolina felony trials in 2011 alone and found that prosecutors exercised peremptory strikes against Black jurors "at more than twice the rate that they excluded white jurors[.]"[4] And a 2021 report by the nonprofit Equal Justice

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[2] *See generally,* James Forman, Jr., *Juries and Race in the Nineteenth Century*, 113 YALE L. J. 895, 918, 931 (2004); *see, also id*. at 931–33; Douglas L. Colbert, *Challenging the Challenge: Thirteenth Amendment as a Prohibition Against the Racial Use of Peremptory Challenges*, 76 CORNELL L. REV. 1, 79, n.396 (1990); *id.* at 86–87.

[3] Press Release, Off. of the Alameda Cnty. Dist. Att'y, *Alameda County Death Penalty Cases Are Reviewed After Prosecutors Discover Evidence of Prosecutorial Misconduct Excluding Jewish and Black Residents from Jury Service in Death Penalty Cases* (April 22, 2024), https://www.alcoda.org/alameda-county-death-penalty-cases-are-reviewed-after-prosecutors-discover-evidence-of-prosecutorial-misconduct-excluding-jewish-and-black-residents-from-jury-service-in-death-penalty-cases.

[4] Ronald F. Wright et. al., *The Jury Sunshine Project: Jury Selection Data as a Political Issue*, 2018 U. ILL. L. REV. 1407, 1419, 1422, 1426 (2018).

Initiative detailed how prosecutors often use, and are trained to use, disingenuous "neutral" reasons, such as demeanor and appearance.[5]

Such "[e]xclusion of Black citizens from service as jurors constitutes a primary example of the evil the Fourteenth Amendment was designed to cure." *Batson*, 472 U.S. at 85. This Court has long recognized that "[d]iscrimination on account of race" inflicts distinctly deep harms that "strike[] at the core concerns of the Fourteenth Amendment and at fundamental values of our society and our legal system." *Rose v. Mitchell*, 443 U.S. 545, 564 (1979); *accord Pena-Rodriguez v. Colorado*, 580 U.S. 206, 221–222 (2017); *Buck v. Davis*, 580 U.S. 100, 124 (2017). The "stigmatizing injury" caused by racial discrimination "is one of the most serious consequences of discriminatory government action," *Allen v. Wright*, 468 U.S. 737, 755 (1984), and "damages both the fact and the perception" that Black people and other people of color have equal value to white people and are as worthy of the rights and protections of citizenship, *Pena-Rodriguez*, 580 U.S. at 223.

Interviews with Black people struck from juries—and later the subject of successful *Batson* claims—affirm the lasting sting of mistreatment in jury selection.[6] For example, a Black venireperson, Marilyn Garrett, who was excluded from the trial of Timothy Foster, *Foster v. Chatman*, 578 U.S. 488, 489–90 (2016), described her experience with jury duty as "really humiliating" even many years later.[7] The

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[5] Equal Just. Initiative, *Race and the Jury: Illegal Discrimination in Jury Selection*, ch. 5 (2021), available at https://eji.org/report/race-and-the-jury/ (noting for example that "a study of illegal racial discrimination in California courts found that prosecutors used racial stereotypes about demeanor to justify peremptory strikes in more than 40% of cases").
[6] *Id.*
[7] *Id.*

experience was also deeply alienating: "I felt like I never wanted to be on a jury [again] because of the way I was treated."[8]

These harms reverberate: All people of color are harmed by state action that is "rooted in, and reflective of, historical prejudice." *Miller-El*, 545 U.S. at 237–38 (quoting *J.E.B.*, 511 U.S. at 128); *see also Elkins v. United States,* 364 U.S. 206, 223 (1960) ("Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example.") (quoting *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J. dissenting)). Particularly so in the St. Louis Metropolitan area, "one of the most racially segregated places in the United States"[9] and the outlier jurisdiction responsible for the vast majority of executions in the state.[10]

B. The Institutional Integrity of our Democracy Relies on Jury Selection Free from Discrimination

But the harms from racial discrimination in jury selection are not confined to people of color: such discrimination undermines public confidence in the integrity of the courts and the rule of law itself. *See Miller-El*, 537 U.S. at 238.

The institution of the jury is integral to sustaining our democracy: "Just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary." *Blakely v.*

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[8] *Id.*

[9] Rigel C. Oliveri, *Setting the Stage for Ferguson: Housing Discrimination and Segregation in St. Louis,* 80 MO. L. REV., 1053, 1053–4; 1065–66 (2015), available at scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=4166&context=mlr.

[10] *See,* Death Penalty Info. Ctr.*, Compromised Justice: How A Legacy of Racial Violence Informs Missouri's Death Penalty Today* at 18 (December 2023), available at https://dpic-cdn.org/production/documents/pdf/Final-Compromised-Justice-DPIC-Report.pdf?dm=1701802738

Washington, 542 U.S. 296, 306 (2004). At its best, this quintessentially democratic institution is a critical bulwark "against the arbitrary exercise of power[,]" *Batson*, 476 U.S. at 86, that "guards the rights of the parties" and "ensures continued acceptance of the laws by all of the people." *Powers,* 499 U.S. at 407. In this way, the jury does not just protect the defendant: it "preserves in the hands of the people that share which they ought to have in the administration of public justice." 3 William Blackstone, Commentaries on the Laws of England 379 (Phila., J.B. Lippincott Co., 1893); see also *Strauder v. West Virginia*, 100 U.S. 303, 308–09 (1880) (referencing Blackstone).

Because of the important role that juries play in our democracy, racial discrimination in jury selection is "especially pernicious" because its "injures not just the defendant," but rather "'the community at large.'" *Buck*, 580 U.S. at 124 (quoting *Rose*, 443 U.S. at 556). Indeed, "[s]election procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice." *Batson,* 476 U.S. at 87. And by "poison[ing] public confidence" in our courts, racial discrimination damages "the law as an institution" and "the democratic ideal reflected in the processes of our courts." *Buck*, 580 U.S. at 124 (internal quotation marks and citations omitted); *see also Ramos v. Louisiana*, 590 U.S. 83, 127 (2020) (Kavanaugh, J., concurring) ("[U]nfairness and racial bias[] can undermine confidence in and respect for the criminal justice system."). Indeed, today confidence in the criminal legal system is startlingly low: According to a 2019 survey from the

Pew Research Center, around nine in 10 Black adults believe that Black people are treated less fairly by the criminal justice system, while 61% of white adults agree.[11]

Judicial acceptance of racial bias during jury selection "condones violations of the United States Constitution within the very institution entrusted with its enforcement, and so it invites cynicism respecting the jury's neutrality and its obligation to adhere to the law." *Powers*, 499 U.S. at 412. Such discrimination is "at war with our basic concepts of a democratic society and a representative government." *Smith v. Texas*, 311 U.S. 128, 130 (1940). It "thus strikes at the fundamental value of our judicial system and our society as a whole," *Rose*, 443 U.S. at 556, compromising our commitment to the rule of law in a multi-racial democracy. This commitment is compromised most acutely when, as here, the discriminatory action is rationalized "based on the very stereotypes the law condemns" and is "rooted in, and reflective of, historical prejudice." *J.E.B.*, 511 U.S. at 127–28.

C. Discrimination in Jury Selection Calls into Question the Reliability of Jury Verdicts

When jury selection is tainted by discrimination, the American people are right to lose confidence in the integrity of the legal system. The harms of all-white or nearly-all white juries are numerous and well-documented. Nonrepresentative juries convict Black defendants at higher rates and on more serious counts.[12] Compared to

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[11] John Gramlich, "From Police to Parole, Black and White Americans Differ Widely in Their Views of Criminal Justice System," PEW RSCH. CTR. (May 21, 2019), available at https://www.pewresearch.org/short-reads/2019/05/21/from-police-to-parole-black-and-white-americans-differ-widely-in-their-views-of-criminal-justice-system.

[12] *See, e.g.*, Shamena Anwar, et al., *The Impact of Jury Race in Criminal Trials*, 127 QUART. J. OF ECON. 1017 (2012); William J. Bowers, et al., *Death Sentencing in Black and White: An Empirical Analysis of Jurors' Race and Jury Racial Composition*, 3 U. PA. J. CONST. L. 171 (2001).

representative juries, all-white and nearly all-white juries make more mistakes and are more likely to presume guilt.[13] They are also more likely to view Black defendants as "remorseless," "dangerous," and even "coldhearted."[14] In contrast, diverse juries are far more likely to hold prosecutors to their standard of proof and discuss problems—such as racial profiling and stereotyping—that are often overlooked by homogenous juries.[15] Representative juries are also better able to assess the credibility of witnesses, such as the two who testified against Mr. Williams.[16]

These documented disadvantages to Black defendants tried by nonrepresentative juries are particularly troubling where, as here, Mr. Williams has raised a well-supported claim of actual innocence. The only evidence connecting Mr. Williams to the murder scene was the testimony of two witnesses, who came forward nearly one year after the murder took place.[17] The St. Louis County Prosecuting Attorney has discovered new evidence that they concede undermines the reliability of these witnesses and, in the words of the State, "casts inexorable doubt" on Mr. Williams conviction.[18] Today, DNA testing results reveal that Mr. Williams was not the source of the physical evidence left on the murder weapon or at the scene of the crime.

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[13] *See, e.g.*, Samuel R. Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberates*, 90 J. PERSONALITY & SOC. PSYCH. 597, 600–606 (2006).
[14] Equal Just. Initiative, *Race and the Jury, supra* note 5.
[15] *Id.*; *see also On Racial Diversity and Group Decision Making*, *supra* note 13.
[16] *See, e.g.*, William J. Bowers, et al., *Crossing Racial Boundaries: A Closer Look at the Roots of Racial Bias in Capital Sentencing When the Defendant Is Black and the Victim Is White*, 53 DEPAUL L. REV. 1497, 1507–08, 1511, 1531 (2004).
[17] *See* Order, *Williams v. Vandergriff*, No. 24-2907, at *4 (8th Cir. Sept. 21, 2024) (Kelly, J., concurring).
[18] *Id.*

Half of all defendants exonerated for murder are Black, meaning that, relative to their share of the general population, innocent Black people are about seven-and-a-half times more likely to be wrongfully convicted of murder.[19] This risk is even greater in Missouri where 18 of 34 people exonerated for murder are Black[20] and where "death-sentenced Black men are overrepresented among cases that were reversed or resulted in exonerations due to official misconduct."[21] And, according to the National Registry of Exonerations, incentivized witness testimony, like that underlying Mr. Williams' conviction, has contributed to 14% of death penalty cases that later led to a DNA exoneration.[22]

For many, these exonerations are hard fought: It takes innocent Black exonerees on death row about 45% longer to secure relief than innocent white people, a disparity that holds true across different types of convictions.[23] Twenty-three years later, Mr. Williams is still waiting to be heard.

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[19] Samuel R. Gross, et al., *Race and Wrongful Convictions in the United States 2022*, NAT'L REGISTRY OF EXONERATIONS at 3 (Sept. 2022), available at https://www.law.umich.edu/special/exoneration/Documents/Race%20Report%20Preview.pdf.

[20] See NAT'L REGISTRY OF EXONERATIONS, law.umich.edu/special/exoneration/Pages/detaillist.aspx?View=%7bfaf6eddb-5a68-4f8f-8a52-2c61f5bf9ead&FilterField1=ST&FilterValue1=MO&FilterField2=Crime&FilterValue2=8_Murder (last accessed on Sept. 23, 2024).

[21] *Compromised Justice, supra* note 10, at 24 (citing *Race and Wrongful Convictions in the United States 2022, supra* note 19) ("Three of the four people who have been exonerated from Missouri's death row are Black men. All three of their cases were marred by official misconduct, with prosecutors withholding favorable evidence and/or relying on false evidence, or police coercing witnesses with incentives.")

[22] See NAT'L REGISTRY OF EXONERATIONS, https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?View=%7BFAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7%7D&FilterField1=DNA&FilterValue1=8%5FDNA&FilterField2=Group&FilterValue2=JI&FilterField3=Sentence&FilterValue3=Death (last accessed on Sept. 23, 2024).

[23] Daniele Selby, *8 Facts You Should Know About Racial Injustice in the Criminal Legal System*, THE INNOCENCE PROJECT (Feb. 5, 2021), available at https://innocenceproject.org/facts-racial-discrimination-justice-system-wrongful-conviction-black-history-month .

"Compliance with *Batson* is essential to ensure that defendants receive a fair trial and to preserve the public confidence upon which our system of criminal justice depends." *Foster,* 578 U.S. at 523 (Alito, J. concurring). As this Court recognized in *Flowers,* "[b]y taking steps to eradicate racial discrimination from the jury selection process, *Batson* sought to protect the rights of defendants and jurors, and to enhance public confidence in the fairness of the criminal justice system." 588 U.S. at 301. Where, as here, a prosecutor's impermissible consideration of race is laid bare by new evidence, a determination that the strike was nonetheless "race-neutral"—without further evaluation—falls far short of the rigor that *Batson* requires. Allowing this miscarriage of justice to stand will deprive Mr. Williams of his right to a fundamentally fair trial and will allow the incurable stain of discrimination to remain in our legal system.

CONCLUSION

On Tuesday, September 24, 2024, at 6:00 p.m. Mr. Williams is scheduled to be executed. He will face his death despite the St. Louis County Prosecuting Attorney expressly admitting that a *Batson* violation occurred in this case.[24] He will face his death despite knowing that the prosecutor's notes from jury selection have been withheld from him. He will face his death despite knowing that the prosecutor who selected his jury conceded that he struck a juror at least in part because, in his words, "they were both young Black men." App. 92a. Such an outcome would be antithetical to the command that we "purge racial prejudice from the administration of justice"

[24] *See* Order*, Williams v. Vandergriff*, No. 24-2907, at *3 (8th Cir. Sept. 21, 2024) (Kelly, J., concurring).

and "ensure that our legal system remains capable of coming ever closer to the promise of equal treatment under the law that is so central to a functioning democracy." *Peña-Rodriguez*, 580 U.S. at 221, 224. This Court must intervene.

Dated: September 24, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 33.1(h), I certify that the Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc. contains 4,037 words, excluding parts of the document that are exempted by Supreme Court Rule 33.1(d).

Executed on the 24th day of September, 2024.

/s/ Samuel Spital
Samuel Spital
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