No. A22-1314

State of Minnesota
In Supreme Court

State of Minnesota,

Respondent,

vs.

Rebecca Julie Malecha,

Appellant.

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

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INTEREST OF *AMICI CURIAE*[1]

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization dedicated to the principles of liberty and equality embodied in our federal and state constitutions and civil rights laws. The ACLU of Minnesota is the ACLU's statewide Minnesota affiliate. The protection of privacy as guaranteed by the Fourth Amendment and Art. 1, § 10 of the Minnesota Constitution, and the preservation of longstanding remedies for violations of those guarantees, are of special concern to each organization.

[1] Under 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.

INTRODUCTION

Both the United States and Minnesota Constitutions protect the rights of their residents to be free from unlawful searches and seizures. U.S. Const. amend. IV; Minn. Const. Art. I, § 10. Indeed, the two Constitutions are "textually identical." *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 158-60 (Minn. 2017). But the way the United States Supreme Court and this Court have enforced those provisions has been markedly different. For nearly 40 years, the U.S. Supreme Court has chipped away at the individual's right to be free of unreasonable searches and seizures by adopting and expanding the "good faith exception," a rule providing that in some situations courts need not exclude evidence, despite the fact that government actors violated the Constitution. *United States v. Leon*, 468 U.S. 897, 909 (1984).

The U.S. Supreme Court has applied the good-faith exception in cases where the government has successfully argued that law enforcement actions were objectively reasonable in reliance on a facially valid warrant or statute, a technical error by another government actor, or a subsequently reversed binding precedent. *Leon*, 468 U.S. 897 (warrant); *Illinois v. Krull*, 480 U.S. 340, 342 (1987) (statute); *Arizona v. Evans*, 514 U.S. 1, 4 (1995) (court technical error); *Herring v. United States*, 555 U.S. 135, 137 (2009) (another officer's technical error); *Davis v. United States*, 564 U.S. 229, 247 (2011) (existing precedent).

Minnesota has taken a different, more protective approach. This Court has repeatedly refused to adopt the federal good-faith regime and held that suppression is appropriate when police conduct searches pursuant to warrants that lack probable cause.

See Garza v. State, 632 N.W.2d 633, 640 (Minn. 2001) ("the good faith of the police cannot cure" violation of Art. I, § 10); *State v. Zanter*, 535 N.W.2d 624, 634 (Minn. 1995) ("the good faith of the police, which we do not question, cannot cure the clear insufficiency of the third warrant application"). This Court is in good company with its resistance to the federal good-faith regime. At least seventeen other states have also refused to adopt a good-faith exception.

This Court recently adopted one limited exception to the exclusionary rule—for searches and seizures that were constitutional under binding judicial precedent at the time they were executed. *State v. Lindquist*, 869 N.W.2d 863 (Minn. 2015). But *Lindquist* itself emphasized "nothing in [that] opinion should be construed as authorizing the application of exceptions [this Court did] not explicitly adopt[]" there because of "the narrowness of [the] holding." *Id.*

Lindquist is a far cry from the situation here: officers arrested an individual without a valid warrant. Not only that, the warrantless arrest occurred because of a recordkeeping error in the warrant process, for which the judicial branch itself bears at least partial responsibility. This is precisely the sort of avoidable error that could be deterred by applying the exclusionary rule. This Court should therefore decline the government's invitation to adopt a new "good-faith exception" to that rule, which would excuse this or other types of constitutional violations and weaken Minnesotans' constitutional protections against unreasonable searches and seizures. This Court should maintain its commitment to enforce the constitutional rights of Minnesotans and reverse.

ARGUMENT

Both 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)). Moreover, "a state supreme court may interpret its own state constitution to offer greater protection of individual rights than does the federal constitution." *Id.* at 827. 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." *State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1985). Accordingly, this Court has often interpreted Article I, § 10 as providing greater protection than the Fourth Amendment. *State v. Askerooth*, 681 N.W.2d 353 (Minn. 2004). This Court should continue to "independently safeguard for the people of Minnesota the protections embodied in our constitution," *State v. Leonard*, 943 N.W.2d 149 at 158, by refusing to adopt additional aspects of the federal good-faith regime.

I. The exclusionary rule is a bulwark for protecting individuals' rights from unconstitutional conduct.

As a general matter, "every right, when withheld, must have a remedy." *Marbury v. Madison*, 5 U.S. 137, 147 (1803). Otherwise, the right would cease to have practical meaning. For over a century, the primary remedy for the violation of a criminal defendant's Fourth Amendment rights has been the suppression or exclusion of illegally-obtained evidence—the exclusionary rule. *Weeks v. United States*, 232 U.S. 383 (1914). The U.S.

Supreme Court long ago held that without the exclusionary rule, the Fourth Amendment would be rendered a nullity. *Id.* at 393. If "private documents c[ould] be seized and held and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, … against such searches and seizures, is of no value, and … might as well be stricken from the Constitution." *Id.*

Nearly half a century later, the Court expanded the protections of the Fourth Amendment, incorporating them against the states. *Elkins v. United States*, 364 U.S. 206, 223 (1960) (incorporating the Fourth Amendment); *Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (incorporating the exclusionary rule). In *Mapp*, the Court held that "the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments." *Mapp*, 367 U.S. at 657. Given that the Court had "recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by state officers is, therefore, constitutional in origin," the Court could not allow that right "to be revocable at the whim of any police officer who, in the name of law enforcement itself, chooses to suspend its enjoyment." *Id.* at 660.

This Court has "likewise concluded that evidence obtained in violation of Article I, Section 10, of the Minnesota Constitution must be suppressed under the exclusionary rule." *Garcia-Mendoza v. 2003 Chevy Tahoe, VIN No. 1GNEC13V23R143453, Plate No. 235JBM*, 852 N.W.2d 659, 666 (Minn. 2014) (citing *Askerooth*, 681 N.W.2d at 370 (Minn. 2004)).

II. While the Supreme Court has chiseled away at the protection provided by the exclusionary rule through a series of so-called "good faith" exceptions, this Court has refused and should continue to refuse to do so.

A. Federal law has retreated from the exclusionary rule.

Since incorporating the Fourth Amendment against the states, the U.S. Supreme Court has engaged in a "gradual but determined strangulation of the [exclusionary] rule." *Leon*, 468 U.S. at 928–29 (Brennan, J., dissenting). First, it retreated from its earlier conclusion in *Mapp* and *Weeks* that the exclusionary rule drew from the Constitution, *see Mapp*, 367 U.S. at 648–49, holding that "the rule is a judicially created remedy," *United States v. Calandra*, 414 U.S. 338, 348 (1974), that Congress could legislate around. Second, the Court 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. Finally, the Court created a giant loophole to the exclusionary rule, allowing prosecutors to use evidence that law enforcement obtained by violating the Fourth Amendment but in "good-faith reliance on a search warrant" later deemed constitutionally defective. *Leon*, 468 U.S. at 901, 905. This so-called "good faith exception" is not based on the officers' good intentions, but on the Court's conclusion that suppression in this circumstance would not incentivize better protection of constitutional rights. *Id*. at 919, n. 20.

In *Leon*, the government sought a warrant to search three residences. *Id.* at 901-02. Although the warrant application was "extensive," it did not establish probable cause for the searches. *Id.* at 902-05. The magistrate issued a warrant despite the government's failure to provide the minimum requisite level of evidence justifying the search. *Id.* The

government did not dispute that the warrant lacked probable cause, but it asked the Court to "recognize a good-faith exception to the Fourth Amendment exclusionary rule" when the evidence was seized in "reasonable" reliance on a defective warrant. *Id.* at 904-05. The Court did so, concluding that "evidence seized by officers reasonably relying on a warrant issued by a detached and neutral magistrate … should be admissible." *Id.*

Leon kicked off a series of retrenchments from the federal exclusionary rule. Just three years later, the Court created a good-faith exception for an officer's reliance on a statute authorizing warrantless administrative searches that was later held unconstitutional. *Krull*, 480 U.S. at 360. Then the Court adopted a good-faith exception for an officer's reliance on mistaken information in a court's database. *Evans*, 514 U.S. at 15-16. The Court created another exception in *Herring* for police reliance on an inaccurate law enforcement recordkeeping system. 555 U.S. at 147-48. Finally, the Court adopted a good-faith exception for an officer's "reasonable reliance on binding judicial precedent" later overturned. *Davis*, 564 U.S. at 239.

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).

B. Minnesota has a long history of rejecting "good faith" exceptions.

For nearly three decades, this Court has consistently "independently safeguard[ed] for the people of Minnesota the protections embodied in our constitution," *Leonard*, 943 N.W.2d at 158, by broadly interpreting Art. 1, § 10 and under its terms excluding evidence obtained via constitutional violations. Both this Court's precedent and sound policy support this Court's continued protection and enforcement of individual constitutional rights in this way.

Since at least 1995, this Court has held that *Leon* and its progeny are inconsistent with the Minnesota Constitution. In *State v. Zanter*, the State asked this Court to excuse an unlawful search because the police officer performed the search "pursuant to a facially valid warrant" that was only "later found to be lacking probable cause." 535 N.W.2d at 634 (citing *Leon*, 468 U.S. 897). Notwithstanding *Leon*, this Court refused, explaining that Art. I, § 10 of the Minnesota Constitution requires probable cause before "warrants shall issue." *Id.* Although the Court "d[id] not question" the "good faith of the police," *id.*, that good faith did not change the requirements of the Minnesota Constitution. An officer's good faith "cannot cure" a lack of probable cause. *Id.*

The Court reaffirmed *Zanter* in 2001. *Garza*, 632 N.W.2d at 640. In *Garza*, the police obtained a search warrant authorizing them to carry out a search with "an unannounced entry." *Id.* at 635. The Court held that the search violated Minnesota's Constitution because the warrant authorizing the unannounced entry was not supported by the "particularized showing of dangerousness, futility or destruction of evidence" that Art. I, § 10 requires. *Id.* at 638. Once again, the State asked the Court to excuse the violation of

the defendant's constitutional rights because "the officers acted in good faith on the basis of a neutral magistrate's authorization." *Id.* at 639 (citing *Leon*, 468 U.S. 897). This Court again declined, explaining: "We interpret the requirement in the Minnesota Constitution that persons not be subject to unreasonable searches and seizures to require sufficiently particularized circumstances justifying an unannounced entry before such entry may be authorized." *Id.* at 640. And although the Court had "no reason to believe police executing the warrant in th[at] case did not act in good faith," the "good faith of the police c[ould not] cure the absence of particularized circumstances." *Id.* (relying on *Zanter*'s "holding [that the] good faith of the police cannot cure" a lack of probable cause in the "application for [a] warrant").

Creating a good-faith exception in this case would be inconsistent with this Court's prior application of the exclusionary rule. A straightforward application of *Garza* and *Zanter* resolves this case. A warrant is valid only if it is "supported by probable cause." *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014), *as amended on denial of reh'g* (Mar. 6, 2014) (citing Minn. Const. Art. I, § 10). Here, the trial court quashed the warrant because there was no longer probable cause to arrest Ms. Malecha. *State v. Malecha*, No. A22-1314, 2023 WL 2359622, at *1 (Minn. Ct. App. Mar. 6, 2023), *review granted* (May 31, 2023). Without probable cause, "the police officers did not a have a valid basis to arrest [Ms. Malecha] or to conduct a search incident to arrest." *Id.* at *2. And the good faith of the arresting officers "cannot cure" a lack of probable cause. *Garza*, 632 N.W.2d at 640; *Zanter*, 535 N.W.2d at 634. So the evidence obtained while violating Ms. Malecha's constitutional rights should have been suppressed.

Further, these precedents demonstrate that under Art. I, § 10, evidence should be suppressed even when an officer acts in good faith reliance on an act of the judiciary. In *Garza*, for example, this Court acknowledged that it had "no reason to believe police executing the warrant . . . did not act in good faith." 632 N.W.2d at 640. But the Court elevated "the requirement in the Minnesota Constitution that persons not be subject to unreasonable searches and seizures" over the State's argument that suppression would not deter future violations by law enforcement, holding that "the good faith of the police cannot cure" their failure to satisfy that requirement. *Id.*; *see also Zanter*, 535 N.W.2d at 634 ("[T]he good faith of the police, which we do not question, cannot cure the clear insufficiency of the third warrant application."); *State v. Jackson*, 742 N.W.2d 163 at 179 (Minn. 2007). ("[W]here there is a pattern of violations along with the apparent ineffectiveness of civil remedies, there is a need for the exclusionary rule as a means of deterrence.").

Disincentivizing police misconduct is important, but it is not the only goal of the exclusionary rule. "Although more recent Supreme Court decisions . . . have narrowed the focus of the exclusionary rule to the deterrence of constitutional violations by law enforcement, the rule was originally justified for the additional reasons that it provided a remedy for the constitutional violation and protected judicial integrity." *State v. Cline*, 617 N.W.2d 277, 289 (Iowa 2000), *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601 (Iowa 2001). Indeed, suppression incentivizes *all* government actors to strive to prevent unconstitutional searches and seizures. In this important way, Art. I, § 10 differs from the U.S. Supreme Court's current formulation of the exclusionary rule.

C. The only circumstance in which the Minnesota Supreme Court adopted a good faith exception, *Lindquist*, was narrow and distinguishable from this case.

This Court's more recent decision in *State v. Lindquist* adopted "a small fragment of federal good-faith jurisprudence," and the "narrowness of [its] holding" counsels against expanding the exception beyond those facts. 869 N.W.2d at 876. The good-faith exception adopted in *Lindquist* applies only where "law enforcement acts in objectively reasonable reliance on binding appellate precedent." *Id.* at 877; *accord Davis*, 564 U.S. 229. That exception is inapplicable here because no binding appellate precedent authorized police to arrest Ms. Malecha without an active warrant. *See Leonard*, 943 N.W.2d at 161 (declining to apply the good-faith exception where police searched hotel guest registry with no individualized suspicion because no binding appellate precedent authorized the search).

This Court should not expand that narrow good faith exception any further. Of the federal good-faith exception cases, *Evans* is the most analogous to Ms. Malecha's. There, like here, law enforcement violated the defendant's rights when relying on a mistake made by judicial branch employees. *Evans*, 514 U.S. at15-16. The Court in *Evans* extended the federal good-faith exception to contexts in which police act in objectively reasonable reliance on a record that turns out to be inaccurate due to a court employee's clerical error. *Id.* at 16. But in *Lindquist*, this Court distinguished *Evans*, noting that there was considerable debate in that case as to whether applying the exclusionary rule to the particular circumstances of the case would deter police misconduct. *Lindquist*, 869 N.W.2d at 877 n.10. (quoting *Evans*, 514 U.S. at 21 (Stevens, J., dissenting)).

Moreover, the Supreme Court's decision in *Evans* "assume[s] that the Fourth Amendment—and particularly the exclusionary rule, which effectuates the Amendment's commands—has the limited purpose of deterring *police* misconduct." *Id.* at 18 (Stevens, J., dissenting) (emphasis added). To the contrary, the "concept of deterrence by exclusion of evidence should extend *to the government as a whole*, not merely the police, on the ground that there would otherwise be no reasonable expectation of keeping the number of resulting false arrests within an acceptable minimum limit." *Id.* at 18 (Souter, J., concurring) (emphasis added).

Evans is inconsistent with *Garza*'s and *Leonard*'s holdings that the exclusionary rule applies to unconstitutional searches and seizures predicated on errors of the judicial branch. Applying the exclusionary rule in cases where a government actor has erred and their error causes a constitutional violation serves the crucial purpose of "motivating [the sovereign] to train all of its personnel to avoid future violations." *Evans*, 514 U.S. at 18–19 (Stevens, J., dissenting); *see also State v. Marsala*, 579 A.2d 58, 66-67 (Conn. 1990) (When evidence is excluded, the government is "informed that a constitutional violation has taken place" and "instructed in how to avoid such violations in the future.").

Here, it is critical that this Court apply the exclusionary rule to incentivize training and policies to guard against future unconstitutional arrests. As Judge Frisch recognized below, "application of the exclusionary rule in a case such as this may well serve the purpose of deterring administrative irregularities or errors and encouraging compliance with branch policies and procedures to secure the integrity of the official court record."

State v. Malecha, No. A22-1314, 2023 WL 2359622, at *8 (Minn. Ct. App. Mar. 6, 2023) (Frisch, J., concurring, *review granted* (May 31, 2023)).

Ms. Malecha's arrest brings to light a deficiency in the district court administration's procedures that must be fixed in order to preserve Minnesotan's constitutional right to be free from unreasonable searches and seizures. There will be no incentive to do so without the exclusionary rule. Unlike the U.S. Supreme Court, this Court has never excused a constitutional violation that was not authorized by binding appellate precedent at the time it was committed. And for nearly 30 years, it has recognized that Art. I, § 10 provides Minnesotans *greater* constitutional protections than does the Fourth Amendment. This Court should continue to "independently safeguard for the people of Minnesota the protections embodied in our constitution," *Leonard*, 943 N.W.2d at 158, by refusing to adopt additional aspects of the federal good-faith regime.

III. The good faith exception to the exclusionary rule is incompatible with many other state Constitutions, for sound reasons that apply to Minnesota's Constitution as well.

This State has been in good company when it historically rejected the good faith exception. A suppression remedy protects individuals from unconstitutional searches and seizures whether that unconstitutional conduct results from police misconduct or judicial error—the reason for the violation of Ms. Malecha's rights—and does so in at least three ways. First, applying the exclusionary rule in situations like this one would improve the warrant process, deter misconduct or negligence, and incentivize processes designed to avoid mistakes by all government actors, including the judiciary. Second, suppression is

the only remedy available when a judicial error causes an unconstitutional search or seizure. Third, applying the exclusionary rule here would safeguard judicial integrity.

Minnesota is far from the only state to find that the good faith exception has no place in its jurisprudence. Seventeen state supreme courts have stood their ground in the face of the U.S. Supreme Court's holding in *Leon*. *See* Christopher R. Green, et al., *State-Court Departures from the Supreme Court: A Comprehensive Survey* (March 10, 2023). 92 Mississippi Law Journal 329 (2023).[2] That is more states than have ever departed from a federal Fourth Amendment precedent. Faulkner, LaKeith and Green, Christopher R., *State-Constitutional Departures From the Supreme Court: The Fourth Amendment (September 12, 2019),* 89 Mississippi Law Journal 197, 198 (2020).

A. The exclusionary rule incentivizes the conscientious engagement of judicial officers in the warrant issuing process.

Many states have held that the exclusionary rule plays a critical role in safeguarding the integrity of the warrant-issuing process. *E.g.*, *Cline*, 617 N.W.2d at 289-90, *abrogated on other grounds by Turner*, 630 N.W.2d 601 ("[T]he exclusionary rule prompts more care and attention at all stages of the warrant-issuing process, including by the judicial officers issuing the warrant."); *State v. Gutierrez*, 863 P.2d 1052, 1068 (N.M 1993) ("[T]he deterrence effectuated by the exclusionary rule reaches not only, as *Leon* asserts, the particular officer involved, but [the entire warrant-issuing] process.").

[2] Connecticut, Delaware, Georgia, Hawaii, Idaho, Iowa, Michigan, New Jersey, New Mexico, Oklahoma, Pennsylvania, Tennessee, Texas, Vermont, Washington, and Wisconsin all join Minnesota in having departed at some point from *Leon*.

Other courts foresaw that adopting good-faith exceptions results in less careful magistrate judges. *See, e.g., State v. Oakes*, 598 A.2d 119, 125 (Vt. 1991) ("The good faith exception effectively shields the issuing judicial officer's probable cause determination from subsequent judicial review" and "less care may be taken precisely because [magistrate judges'] determinations will not be subject to review"); *Marsala*, 579 A.2d at 67 (the "exception for good faith reliance upon a warrant implicitly tells magistrates that they need not take much care in reviewing warrant applications, since their mistakes will from now on have virtually no consequence" (citation omitted). These states recognize that the exclusionary rule incentivizes heightened care for all government employees dealing with warrants, including those responsible for updating court records to reflect that a warrant is no longer active.

B. State constitutions provide greater access to the exclusionary rule.

Like Minnesota, many state supreme courts have held that their Constitutions provide more protection than the federal one does, and that the "'good faith' exception to the exclusionary rule is incompatible with [their] constitution." *Marsala*, 579 A.2d 58; *see e.g.*, *Dorsey v. State*, 761 A.2d 807, 817 (Del. 2000) ("the framers of Delaware's first Declaration of Rights and Constitution did not contemplate excusing violations of the search and seizure right if the police acted in 'good faith.'")[3]; *Com. v. Edmunds*, 526 Pa.

[3] *See also Mason v. State*, 534 A.2d 242, 254–55 (Del. 1987) ("Even if the law enforcement activity in this case was found to comport with the federal Constitution under *Leon,* it would still have to be found to satisfy the Delaware Constitution and statutes in order to be reasonable. As indicated above, this cannot be done"); *Wheeler v. State*, 135 A.3d 282, 298 (Del. 2016) ("this Court has held that our Constitution affords our citizens protections somewhat greater than those of the Fourth Amendment").

374, 376 (Pa. 1991) ("We conclude that a "good faith" exception to the exclusionary rule would frustrate the guarantees embodied in Article I, Section 8, of the Pennsylvania Constitution."); *id.* at 392 (noting that the state constitution's guarantee of freedom from unreasonable search and seizure was based on the original Constitution of 1776, not on the Fourth Amendment, and "is meant to embody a strong notion of privacy"); *State v. Cline*, 617 N.W.2d at 292–93 ("The reasonableness of a police officer's belief that the illegal search is lawful does not lessen the constitutional violation. For the reasons we have already discussed, the United States Supreme Court's rationale justifying the adoption of a good faith exception is neither sound nor persuasive. Therefore, we hold that the good faith exception is incompatible with the Iowa Constitution."); *State v. Canelo*, 653 A.2d 1097, 1105 (N.H. 1995) ("the good faith exception is incompatible with and detrimental to our citizens' strong right of privacy inherent in [the state constitution] and the prohibition against the issuance of warrants without probable cause"); *State v. Afana*, 233 P.3d 879, 884 (Wash. 2010) (Washington's state constitution "clearly recognizes an individual's right to privacy with no express limitations," and, unlike the Fourth Amendment, "emphasizes 'protecting personal rights rather than ... curbing governmental actions.'"); *State v. Novembrino*, 519 A.2d 820, 857 (N.J. 1987) ("We will not subject the procedures that vindicate the fundamental rights guaranteed by article I, paragraph 7 of our State Constitution—procedures that have not diluted the effectiveness of our criminal justice system—to the uncertain effects that we believe will inevitably accompany the good-faith exception to the federal exclusionary rule"); *Gutierrez*, 863 P.2d at 1066 ("We ask . . . how this Court can effectuate the constitutional right to be free from unreasonable search and

seizure. The answer to us is clear: to deny the government the use of evidence obtained pursuant to an unlawful search"); *State v. Carter*, 370 S.E.2d 553, 560 (N.C. 1988) ("Article I, section 18 of our state constitution directs our courts to provide every person with a remedy for injury. We will not abandon a proven remedy in favor of one which, because its ineffectualness is patent beforehand, mocks this constitutionally mandated guaranty").

C. The exclusionary rule ensures a remedy for constitutional violations.

Other courts have recognized that an "undesirable consequence of the adoption of a good faith exception is that persons subjected to an unconstitutional search or seizure would generally be left with no remedy at all." *Cline*, 617 N.W.2d at 289 ("suppression of the evidence does not 'cure' the constitutional invasion . . . but it is clearly the best remedy available."); *see also Dorsey*, 761 A.2d at 821 ("Without a constitutional remedy, a Delaware 'constitutional right' is an oxymoron that could unravel the entire fabric of protections in Delaware's two hundred and twenty-five year old Declaration of Rights"); *State v. Afana*, 233 P.3d at 884 (Under Washington law, "[w]ith very few exceptions, whenever the right of privacy is violated, the remedy follows automatically."). A person subjected to an unconstitutional arrest should be entitled to a remedy; the nature of the mistakes that led to the constitutional violation should not affect the availability of that remedy.

D. The exclusionary rule preserves judicial integrity.

Many courts have noted that adopting the good-faith exceptions undermines judicial integrity. *See Cline*, 617 N.W.2d at 289 ("the exclusionary rule also protects the integrity

of the courts . . . By admitting evidence obtained illegally, courts would in essence condone the illegality by stating it does not matter how the evidence was secured"); *Canelo*, 653 A.2d at 1105 (the exclusionary rule "preserves the integrity of the judiciary and the warrant issuing process"); *Gutierrez*, 863 P.2d at 1068 ("admission of improperly seized evidence denigrates the integrity of the judiciary—judges become accomplices to unconstitutional executive conduct"); *Carter*, 370 S.E.2d at 559, 561 ("Equally of importance in our reasoning, we adhere to the rule for the sake of maintaining the integrity of the judicial branch of government . . . The courts cannot condone or participate in the protection of those who violate the constitutional rights of others"). If this Court were to create a good-faith exception here and excuse a constitutional violation that resulted from the judiciary's mistake, it would defeat the very purpose of the exclusionary rule and raise questions of judicial integrity.

The need to preserve judicial integrity is especially acute when considered together with judicial immunity doctrines. "To promote the public interest in an impartial judiciary free to engage in 'principled and fearless decisionmaking,' the federal common law developed a rule that protects judges from liability" for constitutional harms "resulting from their judicial acts." *Simmons v. Fabian*, 743 N.W.2d 281, 287 (Minn. Ct. App. 2007) (quoting *Pierson v. Ray*, 386 U.S. 547, 554 (1967)). This "[a]bsolute immunity is designed to free the judicial process from the harassment and intimidation associated with litigation." *Burns v. Reed*, 500 U.S. 478, 494 (1991). And it is justified on the theory that "[a] judge's 'errors may be corrected on appeal.'" *Simmons v. Fabian*, 743 N.W.2d at 287 (quoting *Pierson*, 386 U.S. at 554). But the judiciary's error here cannot be "corrected on appeal."

The only remedy remaining to Ms. Malecha is the exclusionary rule. If this Court adopts federal good-faith exceptions, she will "be left with no remedy at all." *Cline*, 617 N.W.2d at 291.

And Ms. Malecha is not the only person who has suffered as a result of this kind of error. Other Minnesotans have also been deprived of their liberty because of mistakes like the one the State seeks to excuse here. In December 2018, for example, police came to Maria de Pineda's house and arrested her on an outstanding warrant, Amicus Addendum, p. 009 (hereinafter "A.Amicus"), while her three sons watched. The next day, Minnesota court administration called the Noble County sheriff's office to tell them that Pineda's warrant had been quashed months earlier. (A.Amicus p. 011). The arresting officer had verified the warrant with dispatch before going to Pineda's home. (A.Amicus p. 009). And after the call from the court, the sheriff's office again checked the system and found no "quash order." (A.Amicus p. 012). The court concluded that its clerk had never sent the order to the sheriff's office. (A.Amicus p. 012). Pineda was released, but only after having spent a night in jail. (A.Amicus p. 010).

* * *

Courts are in the unique position of both authorizing and adjudicating the searches and seizures performed by law enforcement. Despite the judiciary's intimate involvement, its members generally run little risk of having their own constitutional rights violated (like a defendant), and they run no risk of civil liability (like a law enforcement officer) if their actions lead to constitutional violations, *see Simmons*, 743 N.W.2d at 287. This position of power and trust comes with a reciprocal obligation to take precautions against causing

constitutional harms and to take responsibility when those precautions fail. Suppression is a powerful and necessary disincentive for avoidable mistakes that hurt real people. Adopting good-faith exceptions that leave Minnesotans to bear alone the consequences of their government's constitutional violations, *Cline*, 617 N.W.2d at 291, is not consistent with this Court's tradition of strongly guarding the constitutional rights of state residents, *see Garza*, 632 N.W.2d at 639-40; *Leonard*, 943 N.W.2d at 158.

CONCLUSION

This Court should follow its precedents and maintain the historical protections of privacy that Minnesotans adopted in this state's Constitution. In pursuit of that goal, Amici respectfully urge the Court to reject adoption of further federal good-faith exceptions to the exclusionary rule and to reverse the decision of the Court of Appeals.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 & 3, for a brief produced in a proportional font. By automatic word count, the length of this brief is 5,295 words. This brief was prepared using Microsoft Word Version 16.73.

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