
United States Court of Appeals for the Eighth Circuit

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS, SPIRIT LAKE
TRIBE, WESLEY DAVIS, ZACHERY S. KING, COLLETTE BROWN,

Plaintiffs-Appellees,

v.

MICHAEL HOWE, in his official capacity as
Secretary of State of North Dakota,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
(No. 3:22-cv-00022)

RESPONSE TO PLAINTIFFS-APPELLEES' NOTICE OF SUPPLEMENTAL AUTHORITY

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Rather than supporting rehearing, *Medina v. Planned Parenthood South Atlantic*, No. 23-1275 (U.S. June 26, 2025), strongly buttresses the conclusion that the panel correctly applied Section 1983 jurisprudence.

First, Part II of *Medina* squarely establishes that *Gonzaga University v. Doe*, 536 U.S. 273 (2002), applies to claimants seeking to use Section 1983 to privately enforce *all* laws, not just laws enacted under Congress’s Spending Clause authority. Slip Op. 5 (“outlining how to determine whether a statute confers an individually enforceable right under § 1983”). To satisfy the “stringent” and “demanding” test for invoking Section 1983, the statute must “clear[ly] and unambiguous[ly]” display “an unmistakable focus” on individual rights. *Id.* at 6 (cleaned up); *see also id.* at 6-7 (explaining that test “vindicate[s] the separation of powers” and is an avowed departure from jurisprudence of “the mid-20th century” (cleaned up)). Part II.B. of *Medina* explains why that is especially true for Spending Clause statutes and does not detract from Part II.A.’s re-confirmation that the *Gonzaga* test applies to *all* statutes which a claimant seeks to privately enforce using Section 1983.

Second, *Medina*’s discussion of the word “right” in *Marion County Health & Hospital Corp. v. Talevski*, 599 U.S. 166 (2023), does not help Plaintiffs. *Medina* did not give the use of that word talismanic significance. Instead, it merely noted that *Talevski* involved a statute that gave nursing-home residents the “right to choose their own attending physicians” through an express outline of their specific rights.

Slip Op. 16. In contrast, Section 2 does not clearly confer individual rights. As the panel explained, Section 2’s focus is to prohibit states from engaging in “discriminatory conduct.” Panel Op. 10; *see also Gonzaga*, 536 U.S. at 290-91 (denying applicability of Section 1983 for provision of Family Educational *Rights* and Privacy Act).

Third, Justice Thomas’s suggestion that Section 1983 might be *limited* to Reconstruction Amendment legislation does not suggest that Section 1983 thereby extends to *all* such legislation. Rather, Justice Thomas cautioned that Section 1983 “jurisprudence is not without guardrails” and “few federal laws truly ‘secure’ individual rights[.]” Slip Op. 5 n.1 (Thomas, J., concurring).

Dated: June 28, 2025

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CERTIFICATE OF COMPLIANCE

This response complies with the type-volume limit of Federal Rule of Appellate Procedure 28(j) as the body of the response contains 349 words.

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As required by Eighth Cir. R. 28A(h), this response has been scanned for viruses and is virus-free.

Date: June 28, 2025

/s/ David H. Thompson

David H. Thompson

CERTIFICATE OF SERVICE

I certify that on June 28, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ David H. Thompson
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