

No. 23-931

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In the  
**Supreme Court of the United States**

J.W., ET AL.,

*Petitioners,*

v.

ELVIN PALEY,

*Respondent.*

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

**BRIEF OF *AMICUS CURIAE* SOUTHERN  
POVERTY LAW CENTER IN SUPPORT  
OF PETITIONERS**

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**STATEMENT OF INTEREST  
OF *AMICUS CURIAE***

The Southern Poverty Law Center (SPLC)<sup>1</sup> is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. It has long been one of the leading advocates against the use of corporal punishment on children in schools across the South. As part of that work, SPLC has advocated for legislation, engaged in public education, and authored some of the most comprehensive reports on the use and impact of corporal punishment in southern states.

**SUMMARY OF ARGUMENT**

The Southern Poverty Law Center files this brief to bring to the Court’s attention the importance of this case for keeping children safe from corporal punishment in schools. As Petitioner’s brief explains, the Fifth Circuit has interpreted *Ingraham v. Wright*, 430 U.S. 651, 661 (1977), to permit school police and other school officials, to, without parental consent, use violence against children in schools. This includes use of force that would be unconstitutional and often criminal in any other context. That alone is good reason to resolve the circuit split over the application

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<sup>1</sup> Pursuant to Rule 37.6 *amicus curiae* certifies that no party or its counsel authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. Nor did any person other than *amicus curiae* make such a monetary contribution. Pursuant to Rule 37.2 Amicus notified counsel for all parties that it intended to file this brief on March 12, 2024.

of the Fourth Amendment to the use of force in schools. But this case has other important implications for the use of corporal punishment in schools as well.

As policymakers have increasingly recognized, *Ingraham* relied on a set of facts about the use of corporal punishment that have not stood the test of time. And while the Court need not revisit *Ingraham* to resolve the present case, if it grants certiorari and holds that the Fourth Amendment applies to the use of force in schools,<sup>2</sup> that will ensure courts can provide the possibility of a remedy to children who are victims of excessive corporal punishment. The Fifth Circuit's outlier interpretation of *Ingraham* and its decision to apply that to all excessive-force claims in schools has caused corporal punishment to be used more widely in Texas, Louisiana, and Mississippi than in most of the rest of the country, to the detriment of children who by happenstance reside in those states. At the same time, in the years since *Ingraham*, an expert consensus has emerged that corporal punishment is harmful to children in a myriad of ways. Research also shows those harms are disproportionately borne by Black children and children with disabilities. Granting certiorari will allow the Court to clarify and articulate the appropriate legal standard that protects all children from excessive violence irrespective of where they reside, their race, or their disability status.

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<sup>2</sup> *Ingraham* did not address the Fourth Amendment because, prior to *Graham v. Connor*, 490 U.S. 386, 394 (1989), the Court had not clarified that the specific language about seizures in the Fourth Amendment must be analyzed before the more general language in the Fourteenth Amendment, on which *Ingraham* relied.

## ARGUMENT

### A. Corporal Punishment in American Schools is Now the Exception Nationwide, but it Remains Persistent in the Fifth Circuit

When the Supreme Court decided *Ingraham* in 1977, it rested its decision in part on the observation that just two states prohibited in-school corporal punishment, 430 U.S. at 663, and that “in most parts of the country . . . [W]e can discern no trend toward its elimination.” *Id.* at 660–61. In the 2021-2022 school year, in contrast, just two percent of schools—down from three and a half percent in the 2017-2018 school year—employed corporal punishment. Eesha Pendharkar, *Disparities, Bullying, and Corporal Punishment: The Latest Federal Discipline Data*, Education Week (Nov. 21, 2023), <https://www.edweek.org/leadership/disparities-bullying-and-corporal-punishment-the-latest-federal-discipline-data/2023/11>. Only sixteen states explicitly permit, and a further seven do not explicitly prohibit, corporal punishment. Letter from Miguel Cardona, Sec. U.S. Dep’t of Educ., to Governors, Chief State School Officers, and School District and School Leaders, at n. 6 (March 24, 2023), <https://www2.ed.gov/policy/gen/guid/secletter/230324.html>.

Even among those states that do not prohibit corporal punishment, the actual practice of corporal punishment is concentrated in the Fifth Circuit. During the 2013-2014 school year, four states—Texas, Mississippi, Alabama, and Arkansas—accounted for more than three-quarters of all in-school corporal punishment nationwide; Mississippi alone was



responsible for nearly one-quarter of the country's in-school corporal punishment. Derrick Johnson, *Foreword to S. Poverty L. Ctr. and The Ctr. for C. R. and Civ. Remedies, The Striking Outlier: The Persistent, Painful and Problematic Practice of Corporal Punishment in Schools*, at 9(2019), [https://www.splcenter.org/sites/default/files/com\\_corporal\\_punishment\\_final\\_web\\_0.pdf](https://www.splcenter.org/sites/default/files/com_corporal_punishment_final_web_0.pdf) [hereinafter *The Striking Outlier*]. And, in the 2021-2022 school year, 99 percent of corporal punishment was in just ten states: those four plus Georgia, Louisiana, Missouri, Oklahoma, Tennessee, and Florida. Pendharkar, *supra*.

The persistence of corporal punishment primarily in the Fifth Circuit and, to a lesser extent, in neighboring states, is a direct result of the Fifth Circuit's continued refusal to recognize the mere possibility of recovery in federal court for excessive in-school corporal punishment. In southern states outside the Fifth Circuit, schools that have moved away from corporal punishment cited the possibility of liability as a motivating factor. *See, e.g.*, Anna Claire Vollers, *Paddling is Legal in Alabama, But Some Teachers Arrested for Excessive Force*, AL.com (Apr. 11, 2018, 11:05 a.m.), [https://www.al.com/news/2018/04/paddling\\_is\\_legal\\_in\\_alabama\\_b.html](https://www.al.com/news/2018/04/paddling_is_legal_in_alabama_b.html) ("Some local systems and some schools in Alabama have also eliminated paddling, as research shows little benefit to discipline and educators often cite concerns about liability."); Melissa Montoya, *A Previous Paddling Led to Ban on Corporal Punishment in Hendry County Schools*, WINK News (May 4, 2021), <https://winknews.com/2021/05/04/a-previous-paddling-led-to-ban-on-corporal-punishment-in-hendry-county->

schools/ (“The Hendry County School Board got rid of corporal punishment to not only protect the school district from lawsuits and children from harm but to also protect educators from bad mistakes.”). The absence of similar legal liability is one reason corporal punishment persists most strongly in the Fifth Circuit.

**B. The Reduced Use of Corporal Punishment Reflects a Growing Societal Understanding of its Myriad Harms**

In the time since *Ingraham*, a scientific consensus has emerged that corporal punishment is harmful to children. Corporal punishment no longer “play[s] a role in the public education of school children in most parts of the country. 430 U.S. at 660. And it is no longer true that “[p]rofessional and public opinion is sharply divided on the practice . . . .” *Id.* To the contrary, experts agree that “corporal punishment is an ineffective method of discipline and has major deleterious effects on the physical and mental health of those inflicted.” Position Paper of the Society for Adolescent Medicine, *Corporal Punishment in Schools*, 32 J. Adolescent Health 385, 388 (2003).

The effects of corporal punishment on children go beyond visible, physical injury. Scientists have documented the long-term effects of subjecting children to corporal punishment, including violence, drug abuse, and failed interpersonal relationships. “Research has shown that child corporal punishment ‘leads to children’s increased anger, aggression, and tolerance for violence, and ultimately, a more violent society.’” Lekha Menon, *Spare the Rod, Save a Child: Why the Supreme Court Should Revisit Ingraham v.*

Wright and Protect the Substantive Due Process Rights of Students Subjected to Corporal Punishment, 39 Cardozo L. Rev. 313, 330–31 (2017) (quoting Deana Pollard, *Banning Child Corporal Punishment*, 77 Tul. L. Rev. 575, 577 (2003)). It is correlated with higher rates of substance abuse, personality disorders, and antisocial behavior. Tracie O. Afifi et al., *Physical Punishment and Mental Disorders: Results from a Nationally Representative US Sample*, 130 J. Pediatrics 184 (2012). Corporal punishment is also associated with higher rates of future domestic violence among children subjected to it. Elizabeth T. Gershoff, *Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review*, 128 Psych. Bull. 539 (2002).

Corporal punishment has also been shown to interfere with education both directly—by reducing test scores—and indirectly—by increasing absenteeism and school dropout, creating a culture of bullying, and destroying trust in teacher-student and parent-teacher relationships. *The Striking Outlier*, *supra*, at 20; see also Cardona, *supra*, at 1 & nn. 12–14 (collecting research showing “[c]orporal punishment can lead to . . . lower cognitive ability relating to verbal capacity, brain development, and academic achievement.”).

The Court need not stake out a radical position to deliver justice on this issue. By recognizing that the Fourth Amendment applies to the use of excessive force in schools and offering merely *the possibility* of recovery for excessive in-school corporal punishment, this Court will give schoolchildren in the Fifth Circuit the same opportunities that other children in America

have: for their teachers and school administrators to weigh the costs of unrestrained punishment, and for a chance at a fair recovery when their schools mistreat them.

**C. Corporal Punishment Disproportionately Harms Black Children and Children with Disabilities**

The Fifth Circuit's refusal to recognize a potential remedy for corporal punishment not only allows a harmful practice to continue for all children in the Circuit, but also perpetuates racial inequality by perpetuating a system in which Black schoolchildren receive corporal punishment far more often than their white classmates. This is true both because Black children attending schools where corporal punishment is practiced are more likely to be struck and because schools that practice corporal punishment are predominantly in southern states which have higher Black populations. Nationally, in schools where corporal punishment is practiced, 9.6 percent of Black children experience it compared with just 4.7 percent of white children. *The Striking Outlier*, *supra*, at 21.

These gaps are particularly large for Black girls, who are 2.9 times more likely than white girls to be struck. Letter from John B. King, Sec. of U.S. Dep't of Educ., to Governors and Chief State School Officers, at 2 (Nov. 22, 2016), <https://www2.ed.gov/documents/press-releases/11212016-corporal-punishment.pdf>?. The racial gaps are also particularly large in the Fifth Circuit, especially in Mississippi—the five schools in the nation that have the largest gap in corporal punishment rates between Black and white girls are

all in the state. *The Striking Outlier, supra*, at 24. Overall, 27.7 percent of girls struck by school officials in the entire nation live in Mississippi. *Id.* Texas, where this case arises, ranks second, having sixteen percent of all girls struck. And in some Mississippi schools the same children are struck repeatedly—one school reported using corporal punishment 871 times on fifty-seven children, or an average of more than fifteen times per child. *Id.*

Children with disabilities are also disproportionately subjected to corporal punishment. As of 2016, children with disabilities were “50 percent more likely to experience school corporal punishment than their peers without disabilities in 67% of school districts in Alabama, 44% in Arkansas, 34% in Georgia, 35% in Louisiana, 46% in Mississippi, and 36% in Tennessee.” Elizabeth T. Gershoff & Sarah A. Font, *Corporal Punishment in U.S. Public Schools: Prevalence, Disparities in Use, and Status in State and Federal Policy*, 30 Soc. Policy Rep. 1 (2016). Some, but not all, of these states have since banned corporal punishment in schools for children with disabilities. *See Cardona, supra*, at n. 4. Moreover, “[i]n 12% of districts in Alabama, 9% in Mississippi, and 8% in Tennessee, children with disabilities are over 5 times more likely to experience corporal punishment than children without disabilities.” Gershoff & Font, *supra*, at 10.

Schools’ disproportionate use of corporal punishment against Black schoolchildren and children with disabilities have been shielded from consequences by the free rein that the Fifth Circuit has afforded to its states’ schools. While clarifying that

Fourth Amendment excessive force includes corporal punishment against students will not erase these disparities overnight, it will give advocates and attorneys an important and presently unavailable tool to address them.

### CONCLUSION

When children residing in the Fifth Circuit suffer in-school corporal punishment that violates their constitutional rights, they should have the same chance at a fair day in court that all other children enjoy. Recognizing those rights would protect children in the Fifth Circuit and nationwide and reduce the disproportionate and harmful use of corporal punishment on children, particularly Black children and children with disabilities.

RESPECTFULLY SUBMITTED this 22nd day  
of March 2024.

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