No. _____

In the Supreme Court of the United States

WEST CONGRESS STREET PARTNERS, LLC,
Petitioner,

v.

RIVERTOWN DEVELOPMENT, LLC; CITY OF DETROIT, MI; RIVERTOWN HOLDINGS, LLC; JOHN DOE, Of The Wayne County Sheriff's Department; MARK REITH; RIVERTOWN DEVELOPMENT GROUP, LLC; IVAN LUCKEY; JUSTIN TAITE; AUSTIN HUNTER; DENNIS SMITH; RANDY MCGHEE; AUSTON CARR; WILLIE ROBINSON; WAYNE COUNTY,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is the plausibility standard attached to federal conspiracy claims pursuant to 42 U.S.C. § 1985 and 42 U.S.C. § 1986 sufficient to protect minorities against private and state-run agencies who discriminate in real-estate transactions in a concerted effort to remove a minority-owned business amidst a mass gentrification of the City post-bankruptcy?

2. Does Michigan's Elliott-Larsen Civil Rights Act, Mich. Comp. Laws § 37.2502(1), adequately provide protections to minority business owners in Detroit amidst a mass gentrification of the City?

PARTIES TO THE PROCEEDINGS

Petitioner, West Congress Street Partners, LLC, was the appellant in the court below. Respondents, Rivertown Development, LLC., Rivertown Holdings, LLC., Rivertown Development Group, LLC., Mark Rieth, The City of Detroit, Ivan Luckey, Justin Taite, Austin Hunter, Dennis Smith, Randy McGhee, Auston Carr, Willie Robinson, Wayne County, and John Doe of the Wayne County Sheriff's Department were the appellees in the court below.

CORPORATE DISCLOSURE STATEMENT

West Congress Street Partners, LLC is a Michigan Limited Liability Company organized and authorized to conduct business in the State of Michigan.

West Congress Street Partners, LLC is solely owned and operated by Darnell Small, an African-American resident of the City of Detroit. It has no parent corporation. It issues no stock. No publicly held company has any ownership interest in West Congress Street Partners, LLC.

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OPINION BELOW

The Opinion of the Sixth Circuit is unreported Case No. 17-1941 and reproduced in the appendix hereto (Appendices A-D). The Opinion of the District Court for The Eastern District of Michigan Southern Division is unreported Case No. 16-10482 and reproduced in the appendix hereto at App. 1-13.

STATEMENT OF JURISDICTION

The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The United States Court of Appeals for the Sixth Circuit rendered an opinion on June 26, 2018. App. 1-13. The Sixth Circuit affirmed the District Court's opinion dismissing the case for failure to state a claim.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TITLE 42 UNITED STATES CODE, SECTION 1985 (3)

Conspiracy to Interfere with Civil Rights.

> (3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if

two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

TITLE 42 UNITED STATES CODE, SECTION 1986

Action for Neglect to Prevent Conspiracy.

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section [42 USCS § 1985], are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered

in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action, and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

MICHIGAN COMPILED LAWS, SECTION 37.2502(1), THE ELLIOTT-LARSEN CIVIL RIGHTS ACT.

Persons engaging in real estate transactions, real estate brokers, or real estate salesmen; prohibited practices.

(1) A person engaging in a real estate transaction, or a real estate broker or salesman, shall not on the basis of religion, race, color, national origin, age, sex, familial status, or marital status of a person or a person residing with that person:

(a) Refuse to engage in a real estate transaction with a person.

(b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.

(c) Refuse to receive from a person or transmit to a person a bona fide offer to engage in a real estate transaction.

(d) Refuse to negotiate for a real estate transaction with a person.

(e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or knowingly fail to bring a property listing to a person's attention, or refuse to permit a person to inspect real property, or otherwise make unavailable or deny real property to a person.

(f) Make, print, circulate, post, mail, or otherwise cause to be made or published a statement, advertisement, notice, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a preference, limitation, specification, or discrimination with respect to the real estate transaction.

(g) Offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith.

(h) Discriminate against a person in the brokering or appraising of real property.

STATEMENT OF THE CASE

West Congress Street Partners asserts in this case that it was displaced from its business in Detroit, MI amid a mass gentrification of the city. West Congress Street Partners was subject to discrimination in real estate transactions with the aid of private and state-run agencies.

The issue regarded a commercial property of which Plaintiff, owned and operated by an African-American was a tenant and RIVERTOWN HOLDINGS, LLC was its landlord. The RIVERTOWN ENTITIES are operated by Defendant, MARK RIETH, a Caucasian. (Collectively, "RIVERTOWN DEFENDANTS"). WEST CONGRESS and the RIVERTOWN DEFENDANTS began their relationship in 2013 when RIVERTOWN DEFENDANTS purchased a commercial building located at 237 Joseph Campau Street, Detroit, Michigan ("SUBJECT PROPERTY") and became the successor in interest and new landlord of Plaintiff. The two parties were physically positioned to work beside one another with West Congress Street Partners operating in an area approximately 4,500 square feet immediately adjacent to and sharing a common wall with the RIVERTOWN DEFENDANTS. RIVERTOWN DEFENDANTS own and operate Atwater Brewing Company at the Subject Property. From the beginning of the relationship between WEST CONGRESS and RIVERTOWN DEFENDANTS it became clear that the RIVERTOWN DEFENDANTS had only one objective – evict WEST CONGRESS by any and all means necessary, and expand business operations.

The timing of RIVERTOWN DEFENDANTS' actions are especially onerous when considered side-by-side with the political landscape of Michigan regarding the post-

bankruptcy gentrification of the City and the introduction and passage of numerous amendments to the Michigan Liquor Control Code of 1998,[1] making the State of Michigan one of the best states to produce, distribute, and advertise craft beer. More specifically, a state with "the fifth-largest number of microbreweries and brewpubs in the nation."

The RIVERTOWN DEFENDANTS were successful in evicting WEST CONGRESS, albeit through an illegal and discriminatory means with the assistance from the WAYNE COUNTY SHERIFF'S DEPARTMENT, THE DETROIT POLICE DEPARTMENT and the INDIVIDUAL DEFENDANTS OF THE DETROIT POLICE DEPARTMENT in order to expand business operations to produce double the amount of beer and allowed the sale of food on-site. RIVERTOWN DEFENDANTS needed a place to expand, and West Congress Street Partners occupied an attached portion of the building.

Notably, the eviction was effectuated despite a Settlement Agreement which permitted West Congress to remain in the premises for a period of ninety (90) days. WEST CONGRESS and DARNELL SMALL were harassed by RIVERTOWN DEFENDANTS throughout the course of the relationship in their far-reaching attempt to displace the African-American Plaintiff connected to their building in favor of Caucasian Defendants in order to run substantially the same type of business, but double the size and output. RIVERTOWN DEFENDANTS desperately wanted to begin their expansion to use WEST CONGRESS'S space to take advantage of recent legislation while WEST CONGRESS

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[1] MCL 436.1101, *et seq.*

rightfully remained in the premises. WEST CONGRESS'S business was destroyed and never able to be reopened. The coordinated eviction occurred despite RIVERTOWN DEFENDANTS' and the Court-appointed receiver's direct role and knowledge in the settlement agreement, whether by affirmation or willful omission. Nonetheless, RIVERTOWN DEFENDANTS acted in a concerted effort carried out by the Receiver, CITY DEFENDANTS, and the WAYNE COUNTY SHERIFF.

On June 29, 2016 the District Court entered an Order Dismissing Claims against RIVERTOWN DEFENDANTS. (App. 33) On June 30, 2016 the District Court entered a Decision in this matter. (App. 25). Thereafter, on July 24, 2017 the District Court entered a Judgment in favor of Defendant and against Plaintiff. (App. 23). On July 24, 2017 the District Court also entered a Memorandum and Order Granting Defendant's motion to Dismiss the Second Amended Complaint, and Dismissing State-Law claims. (App. 14). As such, Plaintiff filed with the Court and served Defendant with its Notice of Appeal on August 14, 2017. On June 26, 2018 the Sixth Circuit Court of Appeals issued an Opinion in this matter which was not recommended for full-text publication. (App. 1).

REASONS FOR ALLOWANCE OF THE WRIT

Whether the plausibility standard attached to 42 U.S.C.S. § 1985 and § 1986 affords adequate protections to African-Americans when they are subject to discrimination in real estate transactions with the aid of private and state-run agencies is an important question on which this Court's guidance is urgently warranted. The Sixth Circuit and other Circuits conduct a subjective determination between probable and plausible claims relating to alleged conspiracies and the outcome that results is inconsistency. "[T]he plausibility standard is not akin to a probability requirement." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (holding that plaintiffs can "proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." The Sixth Circuit's decision in this case stands at odds with cases decided even within its own Circuit: "[o]ften, defendants' conduct has several plausible explanations. Ferreting out the most likely reason for the defendants' actions is not appropriate at the pleadings stage. *Watson Carpet & Floor Covering, Inc. v. Mohawk Indus*., 648 F.3d 452 (6th Cir. Tenn. 2011). As a result, Plaintiffs and especially minorities are at a clear disadvantage when claims are brought against the City of Detroit, Wayne County, and the police officers working for their respective municipalities.

The plausibility standard, left in its current form, allows the elected officials working in the judiciary to quickly dispose of anything that may garner significant publicity and attention within the community. As well, the plausibility standard is likely to affect the

willingness of an elected official to hold accountable other elected officials in different positions within the government agencies. Here, the City of Detroit and Wayne County officials acknowledged that the eviction had taken place, however, acknowledged through counsel that there exists no record of the eviction ever taking place, no record of the items seized and actions taken, nor the identities of who authorized the officers to be present. As a result, the Circuit courts are left to make subjective determinations regarding plausibility without holding accountable plausible numerous outside factors which provided significant influence.

Additionally, the question of whether Michigan's Elliott-Larsen Civil Rights Act, MCL § 37.2102(1) affords adequate protections to minority-owned businesses warrants further review by this Court. The Sixth Circuit's disregard for the civil rights of minorities in the State of Michigan is in considerable conflict with the concern for equal protection under the law as guaranteed by the United States Constitution.

I. REVIEW IS WARRANTED TO RESOLVE SUBJECTIVE CONFLICTS REGARDING THE PLAUSIBILITY STANDARD ATTACHED TO CONSPIRACY CLAIMS BROUGHT PURSUANT TO 42 U.S.C. § 1985 AND § 1986

To properly state a claim for relief under 42 U.S.C. § 1986, a plaintiff must show the following: 1) a conspiracy of two or more persons; 2) to deprive any person of the equal protection of the laws or of equal privileges and immunities under the laws; 3) whereby an act in furtherance of the conspiracy; 4) either injuries someone in their person or property, or deprives them of any right or privilege of a citizen of

the United States. *United Brotherhood of Carpenters v. Scott*, 463 U.S. 825, 828-829 (1983). Stating a claim under 42 U.S.C. 1985, a plaintiff must allege (1) that a conspiracy existed; (2) for the purpose of depriving any person of the equal protection of or equal privileges and immunities under the laws; (3) that there was an act in furtherance of the conspiracy; and (4) that the act injured a person or deprived him of his rights. *Id.* Anyone having knowledge of a conspiracy under U.S.C. § 1985, and "having power to prevent or aid in preventing the commission of the same neglects or refuses to do so" is in violation of U.S.C. § 1986. *Radvansky v. City of Olmsted Falls*, 395 F.3d 291, 315 (6th Cir. 2005).

With regard to a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the complaint's factual allegations must be enough to raise a right to relief above the speculative level and state a claim to relief that is plausible on its face. *Tam Travel, Inc. v. Delta Airlines, Inc.* (*In re Travel Agent Comm'n Antitrust Litig.*), 583 F.3d 896 (6th Cir. Ohio 2009). Of course, a court must still construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff. Yet, to survive a motion to dismiss, the complaint must contain either direct or inferential allegations respecting all material elements to sustain a recovery under some viable legal theory. *Id.*

Moreover, *Twombly* insists that pleadings be plausible, not probable. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) ("[T]he plausibility standard is not akin to a probability requirement."); *Twombly*, 550 U.S. at 556 (holding that plaintiffs can "proceed even if it strikes a

savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.") Often, defendants' conduct has several plausible explanations. Ferreting out the most likely reason for the defendants' actions is not appropriate at the pleadings stage. *Watson Carpet & Floor Covering, Inc. v. Mohawk Indus.*, 648 F.3d 452 (6th Cir. Tenn. 2011).

The Sixth Circuit's holding that Plaintiff did not meet the plausibility standard was a subjective determination running counter to the enactment of the laws in order to protect an individual's guarantee of equal protection under the law. The considerations of common sense and of fairness are essential and lacking in the Sixth Circuit's determination that "West Congress does not connect the individual officers and deputy to any particular conduct. Nor does West Congress link the asserted injury to any action or policy of Wayne County or the City of Detroit." (Opinion, App. 10). As a result, the Sixth Circuit has run amok and outside of this Court's determination in *Twombly,* 550 U.S. at 566 holding that plaintiffs can proceed even if it strikes a savvy judge that actual proof of those facts is improbable. The Sixth Circuit's disregard for these principles presents a pertinent and substantial issue justifying Supreme Court review.

II. THE SIXTH CIRCUIT'S RULING IS IN CONFLICT WITH MICHIGAN'S AFFORDED PROTECTIONS AS SET FORTH IN THE ELLIOTT-LARSEN CIVIL RIGHTS ACT, MCL § 37.2102(1) AND WARRANTS REVIEW

MCL § 37.2102(1) defines a "real estate transaction" as "the sale, exchange, rental, or lease of real property, or an interest therein." The Elliott-Larson Civil Rights

Act requires "the opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right." MCL 37.2502(1)(b).

A prima facie case of discrimination can be established by demonstrating either intentional discrimination or disparate treatment. *Reisman v Wayne State Regents*, 188 Mich. App. 526, 538; 470 NW2d 678 (1991). Intentional discrimination can be proven by either direct or indirect evidence. *Harrison v Olde Financial*, 225 Mich. App. 601, 606; 572 NW2d 679 (1997). "Direct evidence" is defined "as evidence that, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor." *Id* at 610. Establishing a prima facie case requires "only that the plaintiff has provided enough evidence to create a rebuttable presumption of discrimination." *Id*. at 607-608. "If the court concludes that the plaintiff has established a prima facie case of discrimination, the court then examines whether the defendant has articulated a legitimate, nondiscriminatory reason for its action. If that articulation is made, the court next considers whether the plaintiff has proved by a preponderance of the evidence that the reason offered by the defendant was a mere pretext for discrimination." *Id*. at 608.

The District Court noted the following in dismissing Plaintiff's claims of discrimination, which were affirmed by the Sixth Circuit:

> "[w]hile the complaint describes a sequence of acts in the course of the eviction the only allegation of race as a factor in Rivertown's actions is the conclusionary statement in Paragraph 20 of the complaint: 'Defendants played a substantial role in the egregious acts of misconduct that took place in this complex conspiracy to evict an African-American Tenant and replace Plaintiff with a Caucasian-owned and operated bar/restaurant/brewery, in the City of Detroit." (App. 14).

The Courts clearly engaged in a subjective review outside of the proscribed standards and as a result failed to account for the indirect evidence the Court passively references as "a sequence of acts in the course of the eviction proceeding." *Id*. RIVERTOWN DEFENDANTS were never called upon to rebut the presumption of discrimination laid out by West Congress. As a result, the Elliott-Larsen Civil Rights Act provides no recourse for individuals who experience discrimination. The importance of Supreme Court resolution of the conflict created by the Sixth Circuit is not limited to this case. The City of Detroit is experiencing an unprecedented resurgence post-bankruptcy and scores of African-American business owners and residents are being pushed out of the City on a daily basis. The Sixth Circuit's ruling provides those African-American individuals without any means to seek recourse. So long as the Sixth Circuit continues to rubber-stamp the determinations of the District Court, there will be no uncovering of any pretext to discriminate against a group of individuals. Certiorari is warranted to resolve the conflicting analysis, rulings and rebuttable presumptions of discrimination.

CONCLUSION

For all of the foregoing reasons, petitioner respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

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