No. 18-8605

IN THE

SUPREME COURT OF THE UNITED STATES

GREGORY SWECKER and BEVERLY SWECKER –
PETITIONERS

vs.

UNITED STATES DEPARTMENT OF AGRICULTURE, also known as Farm Service Agency, also known as Rural Utilities Service, et al. –
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

(i) Whether the court of appeal's decision below contradicts existing legal principles when evaluating a motion to dismiss for failure to state a claim upon which relief can be granted and giving contradictory rulings based upon race and gender for the purpose of resolving discrimination cases based on the same pattern and practice of illegal conduct by the same creditors.

(ii) Whether the court of appeal's decision below adversely affects the public's perception of the unbiased nature of the judiciary in a high profile case in the use of renewable energy sources when a substantial burden is placed on litigants to be granted recusal relief from a clearly biased judicial officer and the disqualification of a judgment when it is shown that the Judge had an undisclosed financial interest in the case.

LIST OF PARTIES

Petitioners submits that all parties appear in the caption of the case on the cover page, and are listed below for the Court's reference:

Petitioners: Gregory Swecker and Beverly Swecker

Respondents: United States Department of Agriculture, a/k/a Farm Service Agency a/k/a Rural Utilities Service a/k/a Office of the Assistant Secretary for Civil Rights

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is found at *Gregory Swecker and Beverly Swecker v. United States of America, et al.,* No. 18-1243, Eighth Circuit COA, dated 11/1/2018. Unpublished Opinion.

JURISDICTION

The date on which the highest state court decided the merits of the case was November 1, 2018. A copy of that decision appears at Appendix A. A timely petition for rehearing was thereafter denied on December 20, 2018, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §455(a)

Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. §455(b)(1)

He shall also disqualify himself in the following circumstances:

Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

28 U.S.C. § 1346(b)(1)

Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

United States Constitution, Amendment 14, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction

thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

15 U.S.C. §1691(a)

(a) Activities constituting discrimination. It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

(2) because all or part of the applicant's income derives from any public assistance program; or

(3) because the applicant has in good faith exercised any right under this chapter.

STATEMENT OF THE CASE

Petitioners brought forth a five count Complaint against Respondents in which Petitioners allege negligence, violations of 42 U.S.C. §1983, 15 U.S.C. §1691, 16 U.S.C. §824, Constitutional Violations and Intentional Infliction of Emotional Distress. Said complaint was brought forth originally in the District Court for the District of Columbia before being transferred to the Southern District of Iowa on or about May 17, 2017. This case was brought after many years of prolonged litigation between Petitioners, Respondents, and unnamed parties Midland Power Cooperative and the Central Iowa Power Cooperative, (unnamed parties collectively referred to as "cooperative entities"), as District Court Judge Robert W. Pratt was fully aware. Petitioners, in pursuit of asserting their legal rights under the laws and regulations of the United States, submitted to the District Court that their claims should have been assigned to a different judicial officer based on Judge Pratt's lack of impartiality and demonstrated bias against Petitioners.

It is for this very reason, the knowledge of and intentional bias repeatedly demonstrated by Judge Pratt against the Petitioners, that this case was transmitted back to Judge Pratt at the urging of the Respondents. As a result, it is becoming increasingly clear that Petitioners are being subjected to a civil conspiracy under color of law at 42 U.S.C. §1985 with the intent to cover-up and conceal previous determinations made in Petitioners' favor by the United States Department of Agriculture's ("USDA") National Appeals Division, by the Federal Energy Regulatory Commission, and by the Iowa Utilities Board and Petitioners have been denied any legal remedy for the violations causing them irreparable

harm.

The above-referenced claims were adjudicated in Petitioners' favor and document malfeasance, misconduct and extreme and outrageous behavior causing Petitioners severe emotional distress. Such extreme and outrageous conduct included, but was not limited to, being shut-off from electricity service to Petitioners' home and property for 28 days when complaints of unreasonable discrimination were being investigated, pending and ultimately ruled in Petitioners' favor before the Iowa Utilities Board. Because Midland suffered no consequence for its unlawful action, the same tactic was employed by Midland in 2011 by shutting off electrical service to Petitioners' home, property and QF facility for 50 days in the middle of a cold winter while a valid complaint was filed and pending at FERC. In both cases, the IUB and FERC ruled that Midland's actions were inconsistent with federal and state law but again no remedy has been provided to the Petitioners for the unlawful conduct. For this and other reasons as set forth, the Petitioners have shown they are entitled to relief and the District Court erred in dismissing their claims. Further erroneous was the Eighth Circuit's affirmance of same.

As a result of the before mentioned conduct, Petitioners are being subjected to the depravation of rights under color of law in obtaining redress for the regulatory, statutory and Constitutional violations and egregious acts of "wrong doing" that has been perpetrated against Petitioners for over 20 years and the attempted cover-up of the same by Judge Pratt. Petitioners are being subjected to depravation of rights under color of law for redress at the urging of Respondents based upon an alleged lack of subject matter jurisdiction and employing the same

tactics utilized by cooperative entities in alleging a lack of subject matter jurisdiction in each and every court to which Petitioners have entered over the last two decades. Despite Respondents continued use of false statements, the material fact remains as stated by the Federal Energy Regulatory Commission ("FERC"): "Midland has used the legal process to not comply with the law" and "Never has the Commission been presented with so much evidence of a utility using everything at its disposal to avoided compliance with the federal laws of PURPA."

Petitioners claim that Judge Robert W. Pratt should have recused himself on two legal bases: (1) under 28 U.S.C. §455(a) based upon an alleged appearance of partiality; and (2) under 28 U.S.C. §455(b)(1) because Judge Pratt has personal knowledge of disputed material facts based on his position as the Presiding Judge in previous litigation concerning Petitioners (see Case Number 4:09-cv-00013-RP-SBJ- "foreclosure litigation"). In addition, there is a legal question if Judge Pratt exceeded his authority and retained subject matter jurisdiction to initiate the foreclosure litigation when it directly violated an Act of Congress and the mandate that all civil rights matters were to have been properly investigated and resolved before any acceleration or foreclosure could begin. It is well established that jurisdiction must be established on the date the action was filed- January 9, 2009- and not based upon subsequent events. Judge Pratt failed to render fair and impartial rulings in the underlying case and Petitioners were damaged as a result of his refusal to recuse himself and assign the underlying case to an impartial judicial officer.

Throughout the underlying district court's order, Judge Pratt quotes and

admits OASCR oversees and has responsibilities over the USDA's programs including the Farm Service Agency ("FSA"), Rural Utilities Service ("RUS"), and Office of the Assistant Secretary for Civil Rights ("OASCR") to ensure they comply with all federal laws and then when presented with Petitioners' documented proof of unlawful and discriminatory conduct by Respondents by and through other administrative agencies, Judge Pratt ignores the material facts and rules directly in opposition in order to "cover-up" under color of law the "wrong doing" by FSA and RUS and the malfeasance to investigate by OASCR. It is undisputed that discrimination was found by other administrative bodies and these claims were not properly investigated and adequate remedies were not properly provided to Petitioners by OASCR.

Shortly after the transfer of the underlying case to the Southern District of Iowa, Respondents filed their Motion to Dismiss. The Motion to Dismiss was filed on August 10, 2017. Petitioners responded in opposition on August 21, 2017. Respondents then filed their reply in further support on August 28, 2017 based upon materially false and unsupported material facts. Contrary to the applicable legal standard on a motion to dismiss under Federal Rule(s) of Civil Procedure 12(b)(1) and 12(b)(6), the District Court granted the motion to dismiss with prejudice on November 28, 2017. The District Court further denied Petitioners' motion for recusal within the same order on November 28, 2017. Petitioners timely appealed, and on November 1, 2018, the Eighth Circuit Court of Appeals affirmed the lower court's order. A timely petition for rehearing was filed and was denied on December 20, 2018.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW DRASTICALLY DECREASES THE PUBLIC'S CONFIDENCE IN AN UNBIASED JUDICIARY AS IT ENABLES BIASED JUDGES TO MAKE PARTIAL RULINGS.

28 U.S.C. §455(a) requires a judge to disqualify himself if a reasonable person would have factual grounds to doubt the impartiality of the court. *Blizard v. Frechette*, 601 F.2d 1217, 1220 (1st Cir. 1979). The determination for the district judge to make is whether "his impartiality might reasonably be questioned." 28 U.S.C. §455(a). Section 455(b) lists specific circumstances in which recusal is required, including when a judge has "personal bias or prejudice concerning a party." In fact, "By enacting section 455(a), Congress sought to eradicate not only actual, but also the appearance of impropriety in the federal judiciary." *Moran v. Clarke*, 296 F.3d 638, 648 (8th Cir.2002). An "objective standard of reasonableness" applies in deciding a motion to disqualify. *Pope v. Federal Express Corp.*, 974 F.2d 982, 985 (8th Cir. 1992). "This objective standard is not a test of whether the judge, or a party, might believe that a bias existed, but whether the `average person on the street' would question the impartiality of the judge, under the circumstances." *Id.*

"The goal of section 455(a) is to avoid even the appearance of partiality. If it would appear to a reasonable person that a judge has knowledge of facts that would

give him an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible. The judge's forgetfulness, however, is not the sort of objectively ascertainable fact that can avoid the appearance of partiality." *Hall v. Small Business Administration*, 695 F. 2d 175, 179 (5th Cir. 1983). Under section 455(a), therefore, recusal is required even when a judge lacks actual knowledge of the facts indicating his interest or bias in the case if a reasonable person, knowing all the circumstances, would expect that the judge would have actual knowledge." 796 F. 2d, at 802.

The words of the Senate Judiciary Committee, in recommending what became § 455(a) under the 1974 amendments to §455, provide guidance for judges who must decide whether to disqualify themselves under §455(a): [I]n assessing the reasonableness of a challenge to his impartiality, each judge must be alert to avoid the possibility that those who would question his impartiality are in fact seeking to avoid the consequences of his expected adverse decision. Disqualification for lack of impartiality must have a reasonable basis. Nothing in [§ 455(a)] should be read to warrant the transformation of a litigant's fear that a judge may decide a question against him into a "reasonable fear" that the judge will not be impartial. Litigants ought not have to face a judge where there is a reasonable question of impartiality, but they are not entitled to judges of their own choice. See S.Rep. No. 93-419, 93d Cong., 1st Sess. 5 (1973) (quoted in 13A Wright, Miller & Cooper, Federal Practice and Procedure: Juris 2d § 3549, at 623-24).

A reasonable person on the street who knows all relevant facts would indeed question District Court Judge Pratt's impartiality. Courts have consistently recast the issue as "whether the judge's impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case." *In re KPERS*, 85 F.3d at 1358.

Judge Pratt is/was also the presiding judge over the foreclosure litigation. A review of the record in the foreclosure litigation shows that at every turn, Petitioners were denied the opportunity to fully prosecute their claims and/or put forth factual showings in support of their defenses. Most notably, Judge Pratt denied and dismissed Petitioners' counterclaims and affirmative defenses, which called into question the validity and authority of the USDA to foreclose on their property. Supplementation of the record below shows that Respondent, upon their professional status withheld and suppressed evidence of a Settlement Agreement executed by U.S. Attorney Inga Bumbary Langston. Notably, Petitioners requested that the Eighth Circuit take judicial notice of this agreement in furtherance of supporting the arguments made in their briefs. The Eighth Circuit wrongfully denied the motion for judicial notice stating, in essence, that the documents requested for notice would not aide in their decision making. However, the agreement is central to Petitioners' claims. Further, Judge Pratt refused to allow Petitioners' Expert Fact Witness to submit his report or to testify on Petitioners' behalf. Judge Pratt refused to allow Petitioners any accounting of their loans as required by ECOA 15 U.S.C. 1691 and barred Petitioners from contacting FSA employees due to fear of self-incrimination of wrong doing by FSA employees in

relation to Petitioners' loan proceeds. Additionally, most (if not all) of Judge Pratt's rulings were simply a resuscitation of Respondents' arguments, demonstrating his impartiality and refusal to give all parties an equitable determination on the merits.

Additionally, as presented to the Eighth Circuit in the appellate briefing papers, Judge Pratt's 2009 and 2010 Financial Disclosure Reports document a "Buy" of between $15,000.00 and $50,000.00 of stock in the National Rural Utilities and National Rural Utilities Coops, both affiliates of Midland Power Cooperative, a known competitor of Petitioners. Petitioners, in pursuit of asserting their legal rights under the laws and regulations of the United States, submitted to the United States District Court that their well pled claims should have been assigned to a different judicial officer based on Judge Pratt's clear lack of impartiality and demonstrated bias against Petitioners. This action was transmitted back to the Southern District of Iowa and hand-picked for assignment to Judge Pratt at the urging of the Respondents rather than the district in which the negligent acts and omissions occurred. Jude Pratt did not act in an impartial manner in rendering its rulings surrounding the issues between the parties, regardless of the rulings rendered. As indicated in the appellate record, Judge Pratt has significant financial interests in the National Rural Utilities Coop., an organization that has repeatedly intervened before the Federal Energy Regulatory Commission ("FERC") on behalf of Petitioners' adversary, Midland. The National Rural Utilities Coop and its members seek to destroy competition from renewable energy sources, such as Petitioners, through the use of a biased Judge who had a financial interest in this

case.

This case warrants a granting of certiorari because it calls into question the appropriate application of 28 U.S.C. §455(a), which again provides that "Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Further, "Under § 455(a), disqualification is required if a reasonable person who knew the circumstances would question the judge's impartiality, even though no actual bias or prejudice has been shown." *United States v. Wisecarver*, 644 F.3d 764, 771 (8th Cir.2011). Ironically, in deciding motion(s) for recusal, the judge who is the target of the motion is the one deciding the appropriateness of recusal. How can an impartial judge determine whether or not he is "unbiased" enough to hear a litigant's claims? At best, a separate and independent judicial officer should be hearing Section 455 motions. The District Court erred by having Judge Pratt rule on a motion to recuse himself. The independent nature of the judicial system is seriously put into jeopardy when judicial officers decide for themselves whether or not they are "biased."

The Eighth Circuit panel, in its opinion, stated that Petitioners' claim of judicial bias "lacks merit." The lower court record indicates that at every juncture, Judge Pratt blocked Petitioners from prosecuting their claims and having a full and equitable opportunity to present evidence in support of their claims and defenses. This conduct was exhibited towards Petitioners not only in the separate foreclosure action heard by Judge Pratt, but in the underlying instant action as well. Specifically: (1) In the foreclosure action, Petitioners' Counterclaim and Affirmative

Defenses were dismissed before the end of discovery; (2) Petitioners were never afforded the opportunity to present expert witness testimony which would have supported their claims for discrimination; (3) Petitioners were not given the opportunity for full judicial review of their pending claims for discrimination (as denied by Judge Pratt); (4) In the instant action, the District Court refused to allow Petitioners to fairly and fully adjudicate the merits of their claims by acquiescing to Respondents' request for a dismissal. Cases should be tried on the merits, not outright dismissed based on Respondents continued legal fiction. The public needs to have confidence in the independent and impartial nature of the judiciary. The decisions below fly in the face of building public confidence.

It is of great public importance that citizens have faith and confidence in the judicial branch of government. Attaining confidence does not and will not happen when there are biased judicial officers, such as Judge Pratt, sitting in judgment of a litigant's claims. Petitioners herein were denied opportunity to have their case heard and decided on the merits. Instead, Judge Pratt acquiesced to Respondents (as fellow government officials) and granted dismissal and denied recusal.

Accordingly, the petition for Writ of Certiorari should be granted.

II. THE DECISION BELOW IS IN CONTRAST WITH EXISTING PRINCIPLES WHICH GOVERN THE COURT'S REVIEW OF A MOTION TO DISMISS WITH PREJUDICE, WHICH SEVERELY INHIBTS A LITIGANT'S RIGHT TO AN EQUITABLE RESULT ON THE MERITS.

Rule 12(b)(6) provides that parties may assert by motion a defense based on "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The Eighth Circuit found that under this rule, "the district court properly dismissed the complaint for failure to state a claim because each of the five purported causes of action were premised only on 'threadbare recitals of the elements of a cause of action.'" (Appendix A, Page 2).

The Rule 12(b)(6) test has been revised in recent years. In *Conley vs. Gibson*, 355 U.S. 41 (1957), the Supreme Court stated the interplay between Rule 8 (pleading) and Rule 12(b)(6) as follows: "[T]he accepted rule [is] that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." 355 U.S. at 45-46. In *Bell Atlantic Corporation vs. Twombly*, 55 U.S. 544 (2007), the Court noted questions raised regarding the "no set of facts" test and clarified that "once a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint," *Id.* at 563. It continued: "Conley, then, described the breadth of opportunity to prove what an adequate complaint claims, not the minimum standard of adequate pleading to govern a complaint's survival." *Id.* In *Ashcroft vs. Iqbal*, 556 U.S. 662 (2009), the Court further elaborated on the test, including this statement: "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face.'" *Id.* at 1949 (citation omitted). Where a complaint is inadequate, leave to amend the complaint is common. See, e.g., *Butt vs. United Brotherhood of*

Carpenters & Joiners of America, No. 09–4285, 2010 WL 2080034 (E.D. Pa. May 19, 2010). Here, the District Court erred by not even allowing Petitioners to amend their complaint. The District Court abused its discretion by dismissing all of Petitioners' well-pled claims with prejudice and it sets a dangerous precedent for litigants as the Eighth Circuit affirmed this ruling based on its misapplication of Rule 12(b)(6).

The District Court, in its erroneous order states that "each count is – in its most liberal construction – premised only on threadbare recitals of the elements of a cause of action and attended by conclusory statements that are merely consistent with Defendants' purported liabilities." (Appendix, Page 10). This could not be further from the truth. A review of the underlying complaint reveals that Petitioners provided the Respondents and the Court with short plan statements of each claim, as opposed to 'threadbare recitals of the elements of causes of action,' showing the Petitioners were entitled to relief, as required under Federal Rule of Civil Procedure 8(a)(2).

Petitioners' Complaint set out sufficient factual allegations to survive a motion to dismiss. It is undisputed that Petitioner Gregory Swecker is a small limited resource farmer in Iowa, and that Petitioner Beverly Swecker is the spouse of Gregory Swecker as defined by FSA as to its farm borrowers who have direct or indirect farm sale of less than $174,000 a year. It is the fact that Petitioners are small limited resource farmers that appears to be the very basis in which Judge Pratt shows his bias in which those who are of "limited resources" apparently don't deserve justice for the indisputable "wrong doing" that has been committed and

perpetrated against them. And it is the small, minority and limited resource farmers who were identified in the Federal Register as targets for liquidation in the 1972 Young Executive Report. Respondents targeted those farmers for liquidation with full knowledge that they were violating the Civil Rights of the targeted farmers, those individuals least likely to have the financial resources to mount legal defenses. Respondents not only violated the civil rights of those target farmers but did so under color of law which entitled Petitioners to equitable relief from the Court.

The District Court, in dismissing Petitioners' claims with prejudice, goes so far off course to suggest that the Petitioners filed a discrimination complaint under the basis of their being "limited resource farmers." To the contrary, the material facts provide that Civil Rights Complaint No. 1854757 was filed by Beverly Swecker on March 1, 2004 under the protected basis of race (white) and sex (female) and asserting that male minority non-white farmers were being granted preferential treatment in resolving discrimination complaints pursuant to 15 U.S.C. §1691. Furthermore, a discrimination complaint was filed under the protected basis of Marital Status discrimination as Beverly Swecker had never applied for or was determined "Actively Engaged in Farming" by the County Committee. FSA unlawfully, and with premeditation, entangled Beverly Swecker on the operating loan of her spouse and repeatedly delayed loan funding for well over 60 days with the intent to unlawfully gain the property interest of Beverly Swecker under "color of law" and thus causing irreparable harm. It is also indisputable, that FSA's own NAD Hearing Officer stated regarding Petitioners claims, "FSA did an excessive

amount of investigation to find reasons to deny the loans and the reason given by FSA in denying the loans were not supported by the facts or by the regulations." Despite this finding by FSA's own NAD hearing officer, FSA was not deterred in its discriminatory and unlawful pursuits of Petitioners' property interest.

As the *prima facie* evidence and allegations in the Complaint provide, FSA's then Iowa Farm Program Chief, Mr. Christopher P. Beyerhelm, developed a scheme to circumvent and bypass NAD's decisions by having the County Supervisor approve the loan each year in January (which was subordinated to a local bank) and then requiring the County Supervisor to send the fully completed and approved loan application to Mr. Christopher P. Beyerhlem wherein Mr. Beyerhelm would delay the loan for six months at a time. Since the loan had been "technically approved" by the County Supervisor there was no adverse action to appeal to NAD. The County Supervisor admitted that the Petitioners' loan applications were the only operating loans to which Mr. Beyerhelm required this disparate treatment.

For Judge Pratt to arbitrarily suggest that the delaying of operating loans funding did not cause significant damages to Petitioners and have a direct connection on the foreclosure is inconsistent with all other Court adjudications brought by farmers and clearly demonstrates Judge Pratt's bias against the Petitioners.

The Public Utility Regulatory Policy Act ("PURPA") is a federal law that not only allows but rather encourages U.S. Citizens like the Petitioners in the use of renewable energy sources. Pursuant to the provisions of the Public Utility Regulatory Policy Act, Petitioners own and operate a wind turbine on their farm,

and the wind turbine on their farm is considered a "qualifying facility" (or "QF"), under Federal Energy Regulatory Commission regulations. The Petitioners' QF was pre-owned and obtained in part through sweat equity with the intended purpose to cut expenses in Petitioners' hog operation and to repay FSA.

It is undisputed that the Petitioners' QF has been the subject of a long and contentious dispute with Midland Power Cooperative. As recently as March 1, 2018, FERC stated that Petitioners could proceed for enforcement of PURPA concerning a separate and ongoing matter pursuant to 16 U.S.C. 824a-3 (h)(2)(2012) in Docket No. EL18-48. It is indisputable that Petitioners have been successful in proving Midland's actions as unlawful and discriminatory, and that Midland has knowingly engaged in discriminatory activities pursuant to the Public Utility Regulatory Policy Act. In 1999, the Iowa Utilities Board adjudicated Midland's tariff/contract unreasonable discriminatory, rejected and declared unlawful in violation of Iowa Code 476.21 and PURPA. Midland failed to appeal, but rather, as part of Midland's fraudulent scheme, kept sending the Petitioners the same unlawful contract. Such unlawful acts by Midland were admitted under oath before the Honorable Judge Ronald Schechtman in the Hamilton County Iowa District Court. As a result, Midland's use of an illegal tariff/contract was used in an extortionate manner when it was demanded that unless Petitioners signed Midland's unlawful and discriminatory contract and as a result Petitioners were denied the program benefit of electrical service to which Petitioners were entitled to whether or not they had a renewable energy source. As a result, Petitioners were unconstitutionally denied the use of Petitioners' QF property. Accordingly, and as a

result of the District Court's dismissal of their well-pled claims herein, Petitioners were denied any remedy when Petitioners were defrauded of the right to jury trial for redress that had been granted by Judge Ronald Schechtman.

Midland is a recipient of Federal Financial Assistance from Respondent RUS, a division of the United States Department of Agriculture. It is also undisputed that Petitioners received the first federal enforcement order in the nation from the Federal Energy Regulatory Commission based upon Midland's unlawful and discriminatory conduct. It is well settled that FERC ordered Midland to provide the program benefit of electrical service for the interconnection of Petitioners' QF which had sat idle and was non-operational for six years. Thus, acting within the scope of a QF for purposes of PURPA, Petitioners has repeatedly been the subject of Respondents' discriminatory actions and inactions as sufficiently detailed in the Complaint. Petitioners have been denied any remedy for the unlawful conduct and have suffered irreparable harm as a result thereof. Petitioners have been injured, oppressed, threatened and intimidated by the Respondents because of Petitioners use of renewable energy sources consistent with the laws of PURPA and Respondents have subjected Petitioners to different pains, penalties and punishment through this egregious acts of foreclosure without any investigation of Petitioners' valid civil rights complaints and disconnection of electricity service to Petitioners' home, property and QF facility in retaliation for 78 days when complaints of discrimination were filed. FERC adjudicated that Midland's action in disconnecting electrical service to Petitioners' QF was inconsistent with PURPA.

Jurisdiction was thus conferred upon the District Court under the Federal

Tort Claims Act and the District Court's order of dismissal was clearly in error.

In 1946, Congress passed the Federal Tort Claims Act ("FTCA"), a limited waiver of the United States' sovereign immunity, to permit persons injured by federal-employee tortfeasors to sue the United States for damages in federal district court. *Molzof ex rel. Molzof v. United States*, 502 U.S. 301, 304, 112 S.Ct. 711, 116 L.Ed.2d 731 (1992). In relevant part, the FTCA's liability and jurisdiction-conferring language provides that federal district courts have "exclusive jurisdiction" over claims against the United States for money damages for "personal injury or death or property loss" caused by the negligent or wrongful act or omission" of federal employees "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1).

28 U.S.C. §1346(b)(1) expressly provides in relevant part: "Subject to the provisions of chapter 171 of this title, the district courts...shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property...caused by the **negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment**, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." (emphasis added).

A thorough reading of the Complaint indicated that the claims brought forth against Respondents stem from their willful failure to ensure that all program activities by recipients of federal financial assistance namely FSA, Midland and

CIPCO, acted in compliance with state and federal laws, rules and regulations. This includes a duty to act in a nondiscriminatory manner. Respondents are all sub-agencies of the United States Department of Agriculture, and as such are federally funded and act as service providers for recipients of federal financial assistance from the USDA.

Petitioners' complaint put forth sufficient factual allegations which demonstrated Respondents' breaches, by, in part, failing to fully review, investigate and resolve the multiple discrimination complaints filed by Petitioners over a period of several years. The resulting negligence by and through USDA's employees, while acting within the scope of their official duties, and the duty owed to Petitioners recognized by law to fully review, investigate and resolve Petitioners' on-going complaints of disparate treatment and the resulting breach of that duty failed to prevent the ongoing civil wrongs against the Petitioners. Respondents' continual pattern of breaches of duty left Petitioners threatened with losing their home, property, and wind turbine through foreclosure by USDA despite the unequivocal Congressional intent in enacting a moratorium barring acceleration or foreclosure actions when a complaint of discrimination has been filed with the USDA.

No person in the United States shall be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Midland is a recipient of federal financial assistance from Respondent RUS. Midland denied the Petitioners a program benefit of electrical service to which they were legally entitled. In addition, Farm Service Agency' administers financial aid to small, limited resource farmers

and engaged in a repeated pattern and practice of delaying farm operating loans funding for over 60 days of a completed loan application in direct violation of ECOA.

The Federal Tort Claims Act is the exclusive remedy for the torts committed against the Petitioners.

On or about March 28, 2000, the Iowa Utilities Board adjudicated that the relevant parts of Midland's Co-Generation tariff "were unreasonably discriminatory, rejected and declared unlawful for back-up service fees and demand charges in violation of 18 C.F.R. 292.303(b) of PURPA and Iowa Code §476.21 compared to other member/consumers in the same rate class who did not have a renewable energy source." (emphasis added). Therefore, it is undisputed that nonparty Midland has acted in a discriminatory manner pursuant to both federal and state law of the State of Iowa. As such, Respondents had an obligation to further investigate the claims put forth by Sweckers. Respondent Cheryl Prejean Greaux, acting within the scope of her official capacity by and through Rural Utilities Services, admitted that the Petitioners' complaint was "a program issue and that RUS intended to resolve the complaint in an equitable way." Respondent RUS failed to do so, and the continuation of an escalation of damages thus resulting in Petitioners' claims as set forth in the Complaint.

The Iowa Utilities Board investigation further found that Midland's general managers and its Board of Directors discriminated against the Petitioners compared to other Iowa citizens in the same rate class in direct violation of Iowa Code 476.21. Additionally, it is important to note that Midland did not appeal the Iowa Utilities Board orders and that on or about June 18, 2002, Mr. Roger Wieck,

General Manager of Midland admitted under oath to the question "After the IUB ruling, was tariff 26.16 ever modified to comply with the IUB ruling?" Mr. Wieck's answer: "26.16 was not modified." Thus, for purposes of this Federal Tort Claims Act, it is beyond question that Petitioners' civil rights for purposes of 42 U.S.C. §1983 and their constitutional right to contract were violated and Petitioners were denied a program benefit of electrical service to which they were legally entitled whether or not they had a renewable energy source. Furthermore, Iowa Code 476.21 specifically applicable to Midland barred the exact actions taken by Midland in denying electrical service to the Petitioners because of the use or intended use of renewable energy sources. Thus, it is indisputable that Petitioners were damaged in their property, denied a program benefit of electrical service by a recipient of federal financial assistance and in turn the unconstitutional depravation of the use of Petitioners' QF property for a period of six years. These claims form the basis of the complaint and as such are wholly cognizable under the Federal Tort Claims Act.

Accordingly, the decision below is in contradiction with existing legal principles as they relate to a Court's review of a motion to dismiss with prejudice. De novo review should have demonstrated that Petitioners proffered much more than 'threadbare recitals' to support their causes of action against Respondents. Litigants similarly situated need to be confident that the Courts will render a ruling on the merits, and the decision below does nothing but lessen that confidence. A writ of certiorari for further review is thus warranted in the public interest.

CONCLUSION

For the reasons herein, the petition for writ of certiorari should be granted.

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Respectfully submitted,

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