No. 22-6865

IN THE

SUPREME COURT OF THE UNITED STATES

JENNIFER REINOEHL—PETITIONER

VS.

CENTERS FOR DISEASE CONTROL AND PREVENTION, ET AL.—RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Courts have discretion to hold pro se litigants to a strictly following Fed.R.Civ.P. while ignoring represented litigants' late filings and while using its orders to avoid the Rules itself.
2. Whether Courts have discretion to retain jurisdiction, continue adjudicating a case and issuing orders, and dismissing with prejudice, after striking the Original Complaint entirely months before dismissal and prohibiting all Amended Complaints, and therefore, proceeding without an operative Complaint.
3. Whether a judge who was the lawyer for an organization with a policy identical to those in question in this case, and who, with his wife, is currently employed by that same organization, and who, in previous cases challenging policies identical to those held by the organization, ruled in a way that was favorable to his organization's policies despite the law, has the appearance of bias in this instant case under 28 U.S.C.§455.
4. Whether a pro se Complaint—to which Defendants responded in a way that shows they understand what it was about and where no Defendant asked for a more definitive statement—states a claim upon which relief can be granted and therefore meets Fed.R.Civ.P.8 requirements even though it is long and contains many exhibits supporting its factual statements.

PARTIES TO THE PROCEEDINGS

Petitioner, Jennifer Reinoehl, was the plaintiff in the district court and the appellant in the Seventh Circuit Court of Appeals. Respondent Centers for Disease Control and Prevention was a defendant in the district court and an appellee in the Seventh Circuit.

In addition to the parties identified in the caption, the following 15 individuals and agencies were appellees in the Court of Appeals. Each of them was a defendant in the district court: (U.S.) Food and Drug Administration, Dr. Anthony S. Fauci—former Director of the (U.S.) National Institute of Allergy and Infectious Diseases, Governor Eric J. Holcomb—current governor of Indiana, Dr. Kristina M. Box—current Indiana State Health Director, Marion City-County Council (in Indiana), Marion County Health Department (in Indiana), St. Joseph County Council (in Indiana), St. Joseph County Health Department (in Indiana), Elkhart County Council (in Indiana), Elkhart County Health Department (in Indiana), Beacon Medical Group—an Indiana based medical group that operates hospitals and clinics throughout Northern Indiana, AMC Theatres—a U.S. based international theater chain, Menard, Inc.—a U.S. based national retail home improvement chain, Krispy Kreme Doughnut Corporation—a U.S. based international restaurant, and Sephora—an international retail cosmetic chain with over 1,000 stores in the United States.

RELATED CASES

The proceedings in federal trial and appellate courts identified below are directly related to the above-captioned case in this Court.

- *Reinoehl v. Centers for Disease Control and Prevention, et al.*, No. 3:21-cv-608, U.S. District Court for the Northern District of Indiana, Judgement entered February 16, 2022.
- *Reinoehl v. Centers for Disease Control and Prevention, et al.*, No. 22-1401, U.S. Court of Appeals for the Seventh Circuit. Judgement entered October 25, 2022. Petition for panel rehearing and rehearing en banc denied on December 1, 2022.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Jennifer Reinoehl respectfully petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the Seventh Circuit in this matter.

OPINIONS BELOW

The opinion of the Court of Appeals is unpublished.(App.1A-7A). The opinion of the District Court has been designated for publication but is not yet reported.(App.8A-19A)

JURISDICTION

The date on which the Court of Appeals decided the case was October 25, 2022.(App.1A). A timely petition for rehearing was denied by the Court of Appeals on December 1, 2022.(App.20A) The jurisdiction of this Court is invoked under 28 U.S.C.§1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Statutory provisions are reprinted in Appendix Q.(App.254A).

STATEMENT OF THE CASE

There is 100 years of published scientific and U.S. military data showing cloth masks are ineffective at controlling disease and potentially dangerous (e.g. they spread diseases).(App.29A-36A). In early 2020, the U.S. Surgeon General stated masks could not prevent disease spread, citing scientific studies on medical students.(App.48A,165A). Dr. Anthony S. Fauci, then Director of the National Institute of Allergy and Infectious

Diseases, stated in a personal e-mail that FDA regulated surgical masks, which have smaller holes than cloth masks, would not prevent COVID-19 from spreading because the holes in the masks were too large and allowed viruses to easily pass through.(App.37A). In April 8, 2020, the National Academies of Sciences, Engineering, and Medicine published a paper, concluding there was not good scientific evidence to support the claim cloth masks could prevent COVID-19 from spreading.(App.39A-40A,43A-44A) Disregarding all the above, the Food and Drug Administration ("FDA") decided to "Authorize" cloth and non-medical masks under Emergency Use Authorization ("EUA"), in violation of 21U.S.C.§360bbb–3(e)(1)(A)(ii)(III) because its employees received personal financial gain and achieved political motives from promoting cloth and non-medical masks. Although the FDA is required to help manufacturers work toward full approval of all items authorized under EUA, the FDA never did so for cloth and "non-medical" masks, but justified its failure to follow the law on grounds that these masks would be regulated as if they were apparel (and not medical devices), and manufacturers could not make claims the masks would prevent disease transmission.(App.150A-152A).

Even though the FDA prohibited manufacturers from making these claims, as soon as mask apparel was Authorized, the Centers for Disease Control and Prevention ("CDC") and Dr. Antony S. Fauci began making claims that mask apparel *could* prevent disease transmission without good scientific evidence to support those claims. Dr. Antony S. Fauci and the employees of the CDC did so for political and financial reasons. Congressional records show this was not the first time the FDA and CDC had violated their mission and pushed unsafe medical products on the public for financial gain.(App.141A-150A).

21U.S.C.§360bbb–3(e)(1)(A)(ii)(III), specifically states that all "individuals to whom

the product is administered are informed of the option to accept or *refuse* administration of the product..."(Emphasis added).(App.258A). Instead of following the Food, Drug, and Cosmetic Act and the EUA requirements, the FDA at no time regulated mask apparel even though it knew these masks were being marketed and promoted as medical devices that prevented disease transmission. At no time were individuals told they had the right to refuse mask apparel.(App.151A). "Non-medical" masks were sold that looked identical to fully approved and regulated surgical masks.

State and local governments, such as those in Indiana began mandating cloth and "non-medical" masks for the prevention of disease in direct violation of the EUA and 21U.S.C.§360bbb–3(e)(1)(A)(ii)(III).(App.152A). In these mandates, the government agents and agencies nominally stated that businesses could allow exemptions for the medically disabled who could not wear masks. However, in all media publications, they portrayed those who could not wear masks because of disability as if they were uncaring, disease spreaders who were putting their loved ones at risk.(App.154A-155A). At no point did they scientifically determine if the statements they made were accurate, nor did they scientifically determine if mask apparel with large holes that allow viruses to easily pass through them could prevent diseases transmission.(App.154A). They did not follow any other requirements of 21U.S.C.§360bbb–3.(App.154A).

Given free will by the state to make their own policies, Menard, Inc. ("Menard"), Beacon Medical Group ("Beacon"), Krispy Kreme Doughnut Corporation ("Krispy Kreme"), Sephora, and AMC Theatres all decided to enact policies that discriminated against the medically disabled—preventing them from entering their public accommodations in violation of the Americans with Disabilities Act ("ADA").(App.158A). Their policies were

not made on scientific reasons but were based on fear and profits.(App.158A-159A).

All Respondent-Appellee-Defendants' recommendations, policies, orders, and mandates were enacted without scientific data showing masks would prevent disease transmission, were enacted in violation of the Food, Drug, and Cosmetics Act and the EUA law requirements, and in violation of the ADA.(App.100A-109A; 140A-159A).

Jennifer Reinoehl, petitioner, is a medically disabled person whose asthma and heart problems are exacerbated from wearing mask apparel.(App.53A). Her disabilities qualify her for protection under the ADA.(App.100A-101A). She was forbidden from entering and enjoying public accommodations at AMC Theatres, Sephora, Menard, Krispy Kreme and government buildings without a mask.(App.60A-75A; 101A-102A; 104A-105A). In addition, April 9, 2021, she was allowed to walk through Menard, loading her cart without a mask, but when she got in line to purchase her items, a store manager told her Menard would not sell anything to her unless she wore a mask.(App.70A-71A).

At Beacon facilities, she suffered repeated discrimination. For example, she spent the entire weekend in Beacon's hospital with her preschool-aged daughter without wearing a mask, but when she was told to go pull up her car to take her daughter home, she was prohibited from re-entering the hospital to get her daughter, who was left alone in her hospital room for almost an hour and who thought she was being kidnapped when the nurse came and took her from the room without Reinoehl.(App.71A-72A). On another occasion, Reinoehl was told to wait maskless in a busy Beacon hallway instead of waiting in a secluded corner of a nearly empty waiting room.(App.70A).[1,2]

Unfortunately, Reinoehl was not the only person to suffer discrimination. She has

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[1] In his order, the district court judge, Hon. Damon Leichty, misrepresented this incident.
[2] She recorded some of these incidents and submitted them on a DVD with the SAC.

heard similar stories from many other disabled persons. One friend with traumatic brain injury, who cannot medically wear a mask and agreed to submit an affidavit for Reinoehl's case, documented being stopped at the door of a retail business and being physically grabbed by the security guard—this incident put her in great fear. She had to hide while shopping because customers threatened her and yelled at her. Her disability is more visibly noticeable than Reinoehl's.

After being subjected to discrimination and harassment, Reinoehl notified the entities involved but received no answer addressing her grievance.(App.62A-63A; 67A). She filed this lawsuit August 18, 2021, with evidence supporting her claim pursuant to the Rehabilitation Act of 1973, Titles II and III of the ADA, 45 U.S.C.§ 46.116, 21 U.S.C.§ 331, 21 U.S.C.§ 360bbb, 28 U.S.C.§ 2201, 5 U.S.C.§ 7323, 42 U.S.C. § 1983, *5* U.S.C. § 702, the 1st, 4th 5th, and 14th Amendments..(Docket ("Dkt.") #1—now stricken).

October 15, 2021, Sephora and AMC answered the Original Complaint. In addition, Menard, Krispy Kreme, Beacon, St. Joseph County Council, St. Joseph County Health Dept., Elkhart County Council, and Elkhart County Health Department filed Motions to Dismiss that showed they understood why they were being sued. (Dkt.#74,76, 77,78,105-106; App.169A-185A,185A-193A,194A-204A).

On November 1, 2021, Reinoehl filed her First Amended Complaint ("FAC") as a matter of course, which Marion County Health Department opposed November 2, 2021.(Dkt.#94,100, App. 21A). Governor Eric Holcomb, Dr. Kristina Box, the Marion County Health Department, the St. Joseph County Health Department, the St. Joseph County Council, and the Marion City-County Council failed to timely reply or request another extension of time by their Court approved deadline of November 5, 2021. (Dkt.#7,

26-27,35,38-39,70-71,73,80,82,86,88,117). This was the second time the Marion County Health Department had missed a deadline in the case, and it went unnoticed, again, by the Court.

November 8, 2021, the Court entered an order suspending the need for any defendant to respond to anything, striking the Original Complaint entirely, denying Reinoehl's FAC as a matter of course, denying as moot outstanding motions for extensions of time, and denying as moot all pending motions to dismiss with leave to refile "if necessary."(App.205A-210A). November 9, 2021, the Court continued sanctioning Reinoehl by denying as moot or outright denying all outstanding motions that she had filed.(App.211A).

November 12, 2021, Reinoehl filed a Motion to Reconsider the November 8 & 9, 2021, Orders or in alternate to Certify for Interlocutory Appeal.(Dkt.#123). This Motion was denied November 16, 2021.(App.212A-214A). November 30, 2021, Reinoehl filed by U.S. Priority Mail the Second Amended Complaint ("SAC") as ordered, but the form the Court had ordered her to file with it was inadvertently left on Reinoehl's table and was mailed separately one hour after mailing the SAC.(Dkt.#129-130,App.23A-168A). Reinoehl mistakenly believed mailing them on the date they were due was equivalent to filing them that day. According to the Docket, the SAC form was received December 3, 2021, (a Friday), but the separately mailed SAC did not arrive until December 6, 2021 (a Monday). December 10, 2021, the Court denied Reinoehl leave to file the SAC and struck the form.(App.215A-217A). In its Order, the Court misquoted Reinoehl. December 29, 2021, Reinoehl filed a Motion to Recuse and a Motion to Vacate the December 10, 2021, judgement.(App.218A-240A, 241A-242A). Reinoehl made no further filings because she

believed time would toll until the motions were decided.

In one Order, February 16, 2021, the Court denied the motions (interpreting the Motion to Vacate as a Motion to Reconsider). That same day, it dismissed the entire case with prejudice under Fed.R.Civ.P. 8(a)2(d), 12(f)(1), and 20(a)(2).(App.243A-253A, 8A-19A). It also cited Fed.R.Civ.P. 41(b) in one paragraph of the ten-page order, alleging although Reinoehl had never filed a compliant complaint or a motion for an extension of time in the case, her failure to do so was "not out of lack of ability given her filings in the case." March 11, 2022, Reinoehl filed her timely Notice of Appeal.(Dkt.#144). The Court of Appeals upheld the District Court ruling on October 25, 2022.(App.1A-7A). Reinoehl timely requested a rehearing en banc, that was denied December 1, 2022.(App.20A). Reinoehl timely petitioned this Court for a Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

This case concerns important and recurring questions about *pro se* filings: (1) whether Courts can hold pro se litigants to strictly following Fed.R.Civ.P. while using orders to skirt those Rules; (2) whether a court can retain jurisdiction when there is no filed Complaint; (3) whether a judge should recuse if he and his wife are currently employed by an organization with subject matter interest in the case; and (4) if a lengthy *pro se* Complaint can meet Rule 8 requirements by stating a claim upon which relief can be granted.

The Court of Appeals held that the District Court could deny a Plaintiff the ability to file a FAC as a matter of course if it does not meet Fed.R.Civ.P. 8 guidelines even though this exemption is not in Fed.R.Civ.P. 15(a)(1).(App.3A).

It held that the District Court could use misjoinder as a reason to dismiss a case

under Fed.R.Civ.P. 41(b) when Reinoehl failed to follow an order for her to sever the case herself.(App.4A-5A). This exemption is not in Fed.R.Civ.P. 21.(App.255A). The Court of Appeals held that an entire Complaint can be stricken on grounds it is "immaterial" and "impertinent" if the Complaint was "unintelligible"—again, something not in Fed.R.Civ.P.(App.4A).

The Court of Appeals specifically upheld that a 40-paragraph analysis of *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), is "irrelevant" to an ADA case concerning COVID-19 mask mandates, even though she ties her analysis to this case. For example, under the "*Jacobson v. Massachusetts*" section in SAC ¶¶265-273 names the Respondent-Appellee-Defendants individually.(App.4A, 90A-91A). This conflicts with other Districts who held *Jacobson v. Mass.* is relevant to mandate cases. See *Big Tyme Invs. v.Edwards*, 985 F.3d456 (5th Cir.2021); *McDougall v.Cty.of Ventura*, 23F.4th1095 (9th Cir. 2022)(stating, "the district court concluded that Appellants failed to state a claim under both *Jacobson v.Massachusetts...*"); *Adams&Boyle,P.C. v.Slatery*, 956 F.3d913 (6th Cir.2020).

The Court of Appeals upheld that after striking the Complaint and denying Reinoehl the ability to file any Amended Complaint, the District Court retained jurisdiction for months.(App.6A) Finally, the Court of Appeals recognized that this was an ADA mask mandate case and Reinoehl had standing to sue, but, agreed with the District Court that the Complaint was "unintelligible" and did not follow Fed.R.Civ.P. 8.(App.6A).

Not only are the question present of vital importance, but the Seventh Circuit's decision conflicts with this Court's opinions on the pleading standards for pro se litigants. *Conley v. Gibson*::355 U.S.41(1957); *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Erickson v. Pardus*::551 U.S.89(2007). In this case, the Seventh Circuit read Rule 8 narrowly and

added exemptions in broad interpretations of Rules 15(a)(1) and 21.

"The Rules themselves provide that they are to be construed 'to secure the just, speedy, and inexpensive determination of every action.' Rule 1." *Foman v. Davis*, 371 U.S. 178, (1962). In this case Rules were construed to dismiss Reinoehl from Court with prejudice in a manner that was unjust, delayed, and expensive. If the purpose of Fed.R.Civ.P. 8 is to ensure defendants have notice of a case, once Defendants file an answer, Rule 8 loses significance. See *Wynder v. McMahon*, 360 F.3d 73, 78 (2d Cir. 2004)(concluding "Rule 8 would become a dead letter if district courts were permitted to supplement the Rule's requirements through court orders...and then to dismiss the complaint for failure to comply with those orders. Under such a regime, what Rule 8 currently forbids—dismissals based on stringent pleading standards—could occur indirectly through Rule 41(b).")

The Seventh Circuit's decision also conflicts with this Court's long-standing requirement that "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Preiser v. Newkirk*, 422 U. S. 395, 401 (1975) (quoting *Steffel v. Thompson*, 415 U. S. 452, 459, n. 10 (1974)) (internal quotation marks omitted). See also *Capron v. Van Noorden*, 6 U.S. 126 (1804) ("Here it was the duty of the Court to see that they had jurisdiction, for the consent of parties could not give it. It is therefore an error of the Court, and the plaintiff has a right to take advantage of it.")

Finally, the Seventh Circuit's decision could have significant, adverse, practical consequences. Since *Ashcroft v. Iqbal* 556 U.S. 662, more 80% of non-prisoner *pro se* plaintiffs are denied a voice to their civil rights complaints because their cases are dismissed on Motions to Dismiss or Rule 8 grounds (compared to the 67% dismissed

between *Conley* and *Bell Atlantic Corp. v. Twombly*, 550U.S.544(2007)).[3] It is difficult for a *pro se* litigant to determine how many facts are sufficient to state a plausible claim. If the Seventh Circuit's ruling is allowed to stand, *pro se* civil litigants will not only be dismissed on grounds their complaint lacks enough factual statements to be plausible, but they will also be dismissed for having a complaint that contains too many factual statements and is "too long" or because they sued "too many" defendants—even if they are alleged to have participated in the same series of discriminatory events. Courts wishing to strike entire Complaints to better "manage their dockets" will be able to do so without justice.

In the United States, not only is it difficult to find a paid lawyer who has a free enough schedule to return phone calls, but also public defenders and *pro bono* lawyers are stretched to the maximum. *Pro se* is the only choice for a steady 10% of civil litigants who wish the Courts to resolve their dispute, and most of those cases involve Civil Rights, like this one. If the Seventh District ruling is allowed to stand, even more *pro se* civil litigants will be denied their chance to be heard, and the Courts will effectively be closed to them. This Court's review is therefore warranted.

A. Certiorari Is Warranted To Consider If Courts Have Discretion To Use Orders To Get Around Plain Readings Of The Fed.R.Civ.P. Because It Is Contested Among The Circuits, Precedential, And Of National Significance.

In *Maness v. Meyers*, 419 U.S. 449 (1975), this Court held that it was inappropriate for a Court to use an order to get around a citizen's Fifth Amendment rights. Here, the District Court used its orders to get around the Fed.R.Civ.P. such as ordering Reinoehl to

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[3] Hatamyar, P., (2010) The Tao of Pleading: Do Twombly and Iqbal Matter Empirically? *American University Law Review*. 59(553) p.615
https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1010&context=aulr (Accessed 15 Feb. 2023)

sever the case and then dismissing on grounds she did not sever it herself (in violation of Rule 21).(App.255A). In the end, it used Rule 41(b)—that she disobeyed an order—as grounds for dismissal. It ordered her to remove sections of the Complaint that were pertinent and necessary for Rule 9 heightened pleading standards—forcing Reinoehl to choose between losing her case on Fed.R.Civ.P.12 grounds and then losing the appeal because her Amended Complaint did not contain enough facts or being dismissed for not following a court order. Reinoehl's attempts to follow the order without violating Rule 12(b)(6) and without losing her appeal rights were denied. Here, the District Court ordered Reinoehl to do things she was incapable of doing and prohibited her from doing things Fed.R.Civ.P. specifically give a right to do.

First, Fed.R.Civ.P. 15(a)(1)(B) grants the filing of one Amended Complaint as a matter of course if filed withing 21 days of service of a motion under Rule 12(b).(Ap. 255A) Reinoehl followed this rule, but Respondent-Appellee-Defendants objected, and the District Court denied her filing despite a plain reading of Fed.R.Civ.P.15(a). The Seventh Circuit upheld the District Court's discretion to deny filing an Amended Complaint under Fed.R.Civ.P. 15(a)(1)(B) if the Amended Complaint did not follow Fed.R.Civ.P. 8.(App.3A-4A) That exemption is not in a plain reading of that rule.

Whether Fed.R.Civ.P. 15(a)(1) gives an undisputed right to amend once or not is contested among the circuits. See *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 421 (6th Cir. 2000) (holding "Fed.R.Civ.P. 15(a) gives plaintiffs an absolute right to amend their complaint one time") as opposed to *Grayson v. Mayview State Hosp*, 293 F.3d 103 (3d Cir. 2002) (holding "Under Rule 15(a), if a plaintiff requests leave to amend a complaint vulnerable to dismissal *before a responsive pleading is filed*, such leave must be granted *in*

the absence of undue delay, bad faith, dilatory motive, unfair prejudice, or futility of amendment..." Emphasis added.) See also *Fortner v. Thomas*, 983 F.2d 1024 (11th Cir. 1993) (Holding there is an absolute right to amend).

When a Court prohibits a Plaintiff from doing something Fed.R.Civ.P. 15 gives her the right to do, justice is not served. It is one thing for a Court to flexibly interpret rules. However, if a Court has discretion to make an order that abrogates Rules, then the Rules become impotent. Whether or not Plaintiffs have a right to file one Amended Complaint or whether the court can deny that right is an extremely important dispute that this Court should resolve to settle the conflict.

Second, Reinoehl maintains the facts in the Complaint are necessary to support her claims against the Respondent-Appellee-Defendants —some of whom are government actors and agencies and require the heightened pleading requirements of Fed.R.Civ.P. 9.(App.255A). Reinoehl maintains she was not deliberately disobeying orders but attempting to preserve her claims for appeal. The Seventh Circuit held if she had removed claims in an Amended Complaint, she would have preserved them from the stricken Original Complaint.(App.5A). Precedent states an Amended Complaint replaces prior Complaints and claims that are not replead are lost. See, e.g., *Lubin and Lubin v.Chicago Title and Trust Company, et al*, 260 F.2d411(7th Cir.1958)("It is hornbook law that an amended complaint complete in itself and making no reference to nor adopting any portion of a prior complaint renders the latter *functus officio*"); cf. *Garrett v. Wexford Health*, 938 F.3d69, 80 n.13(3d Cir. 2019)("Given his pro se status, we do not fault Garrett for repleading his claims against the Medical Defendants in the FAC despite the Magistrate Judge's instruction to the contrary. Repleading preserved the dismissal of those claims for

our appellate review"). Cf. *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012)(en banc)("For claims dismissed with prejudice and without leave to amend, we will not require that they be repled in a subsequent amended complaint to preserve them for appeal.")

This is not a case where the District Court dismissed specific claims or defendants from the complaint and asked Reinoehl to rewrite the Complaint without those dismissed claims or defendants. In this case, the District Court did not even specify in its order which claims or defendants to remove.(App.205A-210A, 212A-213A, 215A-217A). Whether or not an amended complaint replaces the original or whether claims from an original, *stricken* complaint can be preserved if not repled is an important question that this Court should decide to set precedent and resolve circuit conflict.

Third, striking a Complaint or portion of a Complaint from a case has long been held to be a drastic sanction across most circuits. See *Brown and Williamson Tobacco Corp. v. United States*, 201 F.2d 819, 822 (6th Cir.1953); *Lunsford v. United States*, 570 F.2d 221, 229 (8th Cir. 1977); *Cipollone v. Liggett Group, Inc.*, 789 F.2d 181, 188 (3d Cir. 1986) ("Motions to strike...should not be granted unless the relevant insufficiency is "clearly apparent.") The District Court cites Fed.R.Civ.P.12(f)(1) in its final order and claims Reinoehl's failure to follow this Rule is one grounds for the Court's dismissal of the case.(App.8A-19A). Fed.R.Civ.P.12(f) outlines the reasons a Complaint or portion of a Complaint may be stricken *sua sponte* by the *Court*.(App.255A). Like misjoinder, Fed.R.Civ.P.12(f) "is neither an authorized nor a proper way to procure the dismissal of all or a part of a complaint" *Wright Miller, Federal Prac. Proc.:Civil* 3d §1380, at 782(1969).

The District Court alleged it struck the complaint because it was "immaterial" and

"impertinent." However, the entire Complaint, including but not limited to the jurisdictional statement and list of detailed, dated, discriminatory events, cannot entirely be "immaterial" and "impertinent." The Seventh Circuit claims the Complaint was too confusing for the District Court to strike the specific parts to which it objected. However, these parts were separated. For example, the 40-paragraph *Jacobson v. Mass.* analysis was under its own subtitle making it easy to strike by itself. Further, "unintelligible" is not a reason to strike something under Fed.R.Civ.P.12(f).

The District Court also struck the form it ordered Reinoehl to file with her SAC.(App.210A, 217A). A form the Court ordered Reinoehl to file cannot be "immaterial" or "impertinent." If it were, the Court should not have ordered her to file it. The District Court alleges Reinoehl did not follow Fed.R.Civ.P. 12(f)(1), but it was the District Court that failed to follow the rule and struck everything instead of just those things allowed by Rule 12(f)(1).(App.255A). Whether or not the Court has discretion to order an entire Complaint stricken citing it is "immaterial," and "impertinent" from Rule 12(f)(1) is an extremely important decision that this Court should resolve to set national precedent.

Finally, the District Court *sua sponte* ordered Reinoehl to sever the Complaint.(App. 209A). The Court stated it would sever it for her if she did not.(App.209A). When Reinoehl did not sever the case because she did not know how—the Court cited Fed.R.Civ.P. 20 as grounds for dismissing the case and her failure to follow its order—in opposition to a facial reading of Fed.R.Civ.P. 21 and the original order itself.(App.209A, 255A). Whether or not a District Court can order a Plaintiff to do something she does not know how to do to get around Fed.R.Civ.P. 21 is an extremely important decision that this Court should resolve to set national precedent.

B. Certiorari Is Warranted Because It is Precedential And Of National Significance To Consider If Courts Can Retain Jurisdiction Over A Case Without A Complaint.

The District Court's final February 16, 2022, Order recognizes, "[N]o operative complaint exists in this case. A case cannot proceed without one." (App.17A). The case did not have an operative Complaint since November 8, 2021. The Court admitted, it lost jurisdiction without an operative complaint (after November 8, 2021) yet it continued issuing orders for about three months.(App.17A). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3).(App.255A)

Reinoehl attempted to file amended complaints but was denied.(App.215A-217A). Proceeding without jurisdiction, the Court ordered Reinoehl to file a Third Amended Complaint—and when that order, issued without jurisdiction—was not followed because of excusable neglect, Rule 41(b) was used to dismiss the case with prejudice.(App.8A-19A).

Long-held precedent is that once the District Court loses jurisdiction, a case is to be dismissed *without prejudice immediately*:

> "Courts are constituted by authority, and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal. *Elliott v. Peirsol*, 1 Pet. 328, 26 U. S. 340; *Old Wayne Life Assn. v. McDonough*, 204 U. S. 8." *Vallely v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348 at 353 (1920).

See also *Ex Parte Bain*, 121 U.S. 1 (1887) (holding that when a Court strikes something necessary for jurisdiction, "the jurisdiction of the offense is gone, and the court has no right to proceed any further in the progress of the case"). "Establishment of subject

matter jurisdiction is so important that a party ostensibly invoking federal jurisdiction may later challenge it as a means of avoiding an adverse result on the merits." 13 Wright & Miller, *Federal Practice and Procedure* §3522, pp. 122–23 (2020). The Seventh Circuit's holding that the Court could act without jurisdiction challenges that precedent. Whether or not a District Court can proceed without jurisdiction after striking an entire complaint and prohibiting amended complaints from being filed is an extremely important decision that this Court should resolve to set national precedent and to prevent the injustice of a court issuing orders without jurisdiction and unjustly dragging out the length and expense of a case.

C. Certiorari Is Warranted To Consider If When A Judge And His Wife Are Employed By An Organization With Subject Matter Interest In the Case And That Judge Has Increased Time And Expense Of The Case Should Recuse Because It Is Precedential And Of National Significance.

Reinoehl is a professional writer with two degrees from Indiana University. She admits her legal knowledge is limited, but if she could not write coherently in ways that are not "vague" and "confusing," she could not make money writing—nor could she write a coherent appeal or a coherent petition for writ of certiorari.

Reinoehl lives near Michigan. She was also discriminated against in that state, and filed a lawsuit there (*Reinoehl v. Whitmer*, No. 1:21-CV-61, 2021). That Complaint contained the exact same sections detailing the 100 years of scientific evidence showing cloth masks do not prevent the spread of disease (with the same exhibits) and the same analysis of *Jacobson v. Mass.*—to which the Hon. Damon Leichty in this instant case objected. The complaint in *Reinoehl v. Whitmer* passed that Court's Magistrate Judge

screening. Like this case, none of those Defendants asked for a more definitive statement. Reinoehl was never ordered to Amend that Complaint nor was it stricken.

Prior to filing this Complaint, Reinoehl had her grandmother, who does not have a high school diploma, read it and mark any part of it she did not understand—which Reinoehl then rewrote. After filing, Reinoehl was contacted by reporters who understood Reinoehl's Complaint. The Northern District of Indiana Magistrate Judge, who handled this case from August until November of 2021, did not allege the Complaint was deficient.

Because so many people had seen this Complaint but not alleged it was "unintelligible," when the Marion County Health Department asked the Court to sanction Reinoehl for the Complaint's length, and the Court immediately after struck the Complaint as "unintelligible," she was confused. Then, she learned the judge and his wife work for a university with a discriminatory mask policy identical to Respondent-Appellee-Defendants' policies.

Hon. Damon Leichty had prior knowledge that these discriminatory policies failed to follow United States laws, and he supported discriminatory mandates and other questionable policies his university had from the bench. He wrote an almost 100-page Opinion in *Klaassen v. Trustees of Indiana Univ.*, 549 F. Supp. 3d 836 (N.D. Ind. 2021), vacated as moot, 24 F.4th 638 (7th Cir. 2022) in which he acknowledged Emergency Use Authorization required citizens to have the right to refuse anything so Authorized, but he still ruled that universities, such as the one for which he worked, were allowed to make policies denying citizens that Congressionally bestowed right. (See *Klaassen* at 850).

Further evidence Hon. Damon Leichty is biased against Reinoehl can be found by comparing the lawyer filed Complaint in *Klaassen* with Reinoehl's Complaint. *Klaassen*

contained one defendant and two claims, but despite being far less complex, was 55 pages long with 66 pages of exhibits—slightly less than half as long as Reinoehl's Complaint against 16 Defendants. Like Reinoehl's Complaint, the *Klaassen* Complaint contained a *Jacobson v. Mass.* analysis and historical medical information (in that case about the Tuskegee syphilis experiments). Hon. Damon Leichty neither struck that Complaint because it was "unintelligible" nor ordered the *Klaassen* lawyer to rewrite it.

> "The goal of procedural fairness is for all litigants, whether represented or not, to feel that they: (1) have a voice in the process, are given the opportunity to be heard, are listened to, and have genuine input into the decision-making process; (2) understand what is happening and what they are supposed to do through each stage of the litigation; (3) are treated with respect and on an equal footing with attorneys and represented parties; and (4) are treated fairly by the judge (and the judicial system in general) in a neutral, unbiased fashion." Wood, Jefri. 2016. *Pro Se Case Management for Nonprisoner Civil Litigation*. Washington, D.C.: Federal Judicial Center.[4] See also Judicial Conference of the United States, *Strategic Plan for the Federal Judiciary* (2015), supra note 4, at 2; and Self-Represented Litigation Network, National Judicial College, National Center for State Courts & American Judicature Society, *Handling Cases Involving Self-Represented Litigants: A National Bench Guide for Judges* at 2-5 to 2-9 (2008).

In this case, Reinoehl has not had a chance to be heard, has not understood what happened, and was not treated fairly with respect. For example, Reinoehl stated upon filing the SAC:

> "Plaintiff has shortened the Second Amended Complaint as the Hon. Damon R. Leichty Ordered, added additional subtitles to help with clarity, and reduced the number of pages, paragraphs, and attached Exhibits."(App.23A).

When Hon. Damon R. Leichty denied filing, he falsely stated:

> "The proposed amended complaint and exhibits have grown worse—now 129 pages and 256 exhibits as compared to her original complaint

[4]https://www.fjc.gov/sites/default/files/2017/Pro_Se_Case_Management_for_Nonprisoner_Civil_Litigation.pdf. Retrieved August 13, 2020.

of 128 pages and 246 exhibits." (App.216A).

Reinoehl asked him to vacate/reconsider it because:

> "In his order, he falsely stated Plaintiff had attached *more* exhibits to the Second Amended Complaint than what Plaintiff had attached to the Original Complaint. Even if he meant to state Plaintiff had attached more pages of exhibits (instead of "exhibits"), his statement would have still been false. The [SAC] contained about 40 *fewer* pages of exhibits than those attached to the Original Complaint." (App.241A).

However, even in acknowledging his error Hon. Damon Leichty *continued to insist* the *pages of exhibits grew* from the Original Complaint to the SAC saying:

> "Ms. Reinoehl appears quite right that her proposed second amended complaint attached 256 *pages of exhibits* rather than 256 *exhibits*, and that her original complaint attached 246 *pages of exhibits* rather than 246 *exhibits*."(App.252A).

This is not what Reinoehl said. There are 265 pages of exhibits attached to the Original Complaint plus 36 exhibit identifiers. There are 216 pages of exhibits attached to the SAC plus 36 exhibit identifiers. The page number shrank from the Original Complaint. The total page number (exhibits and Complaint) also shrank. This decrease was acknowledged by the Seventh Circuit.(App.2A). Hon. Damon Leichty also misquoted Reinoehl's Complaints and represented them in the least favorable way possible.(App.8A-19A, 205A-210A, 215A-217A)

Reinoehl tried to file the SAC as ordered and was denied.(App.215-217). Since Hon. Damon Leichty ordered that she file the SAC—the Court had given her leave to do so, but then revoked this leave without reason since it could have allowed her to file the SAC and then dismissed the case if the SAC was lacking.

The appearance of fairness does not exist when Reinoehl is singled out for missing Court deadlines because she failed to understand something—while at the same time,

represented Respondent-Appellee-Defendants missed deadlines without sanction or Court notice. The appearance fairness does not exist when motions by represented defendants are upheld while all plaintiff's motions are denied—including an FAC filed as a matter of course. The Seventh Circuit states Reinoehl cannot compare the way she was treated to the way represented Respondent-Appellee-Defendants were treated to establish judicial bias.(App.4A). However, disparate treatment of similarly situated individuals is the way to establish an employment discrimination case, so it should also be available as a factor to determine judicial bias. *Holifield v. Reno*, 115F.3d1555(11th Cir.1997), *Smith v. Stratus Computer, Inc.* 40F.3d11(1st Cir.1994); *Mitchell v. Toledo Hospital*, 964F.2d 577(6th Cir. 1992); *Williams v. Ford Motor Co.*, 14F.3d1305 at 1309(8th Cir.1994). ("In determining whether employees are "similarly situated" for purposes of establishing a prima facie case we consider whether the employees are involved in or accused of the same or similar conduct and are disciplined in different ways.")

The duty to sit has been challenged since the 1974 revision of 28U.S.C.§455. It was rewritten to expand recusal to the "appearance" of bias—whether or not bias really exists. The Seventh Circuit limited recusal to only if the judge has financial interest in a defendant in the instant case. However, subject matter interest is specifically mentioned. A judge who worked for a university as its lawyer and who continues getting paid by that university in some capacity after becoming a judge will always have the appearance of bias in cases in which that organization has subject matter interest. Further, 28U.S.C.§455(b)(4) specifically states recusal is appropriate when:

> "He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest *in the subject matter* in controversy..." [Emphasis added].(App.259A).

In this case, the Hon. Damon Leichty and his wife work for and have worked for a university with a policy identical to the policy in question here. The Hon. Damon Leichty has set aside clearly written Congressional guidelines to rule in favor of his university's policy in the past. The average citizen would assume the judge is biased in favor of the policies of his university and will continuing ruling in favor of it.

Just as Hon. Damon Leichty did not follow a clear reading of 21U.S.C.§360bbb when previously ruling in favor of his university's vaccine mandate, he did not follow a clear reading of Fed.R.Civ.P. here and treated Respondent-Appellee-Defendants differently from Reinoehl. The average citizen would assume the judge is biased—especially in light of his above financial relationship. When Respondent-Appellee-Defendants and Hon. Damon Leichty recognize Reinoehl had an ADA claim in her Complaint, but she is repeatedly ordered to rewrite it because it is "incomprehensible," the average citizen would assume the judge is biased. When the judge loses jurisdiction by striking an entire Complaint for reasons other than those allowed by Fed.R.Civ.P. but continues adjudicating in a way that only harms plaintiff, the average citizen would assume that judge is biased.

When Hon. Damon Leichty repeatedly misquoted and misrepresented Reinoehl's Complaint statements—even after she drew notice to this—the average citizen would assume the judge is biased. See Richard E. Flamm, *Judicial Disqualification: Recusal and Disqualification of Judges* §10.4 (1996)(recusal appropriate where judge's mind has become "irrevocably closed").

The purpose of 28U.S.C.§455 is not to preserve the appearance of an unbiased judiciary to other judges. "What matters is not the reality of bias or prejudice but its

appearance," and "[q]uite simply and quite universally, recusal [is] required whenever `impartiality might reasonably be questioned.'" *Liteky v. United States*, 510U.S. at 548,114 S.Ct.1147 (quoting 28 U.S.C.§455(a)); see also *In re Boston's Children First*,244F.3d at 167; *In re United States*,158F.3d at 31. ("[J]ustice must satisfy the appearance of justice.") *State v. Deutsch*, 34N.J.190, 206, 168A.2d12 (1961) (quoting *Offutt v. United States*, 348U.S.11,14, 75S.Ct.11,13, 99L.Ed.11,16(1954)). ("The very purpose of §455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible.") *Liljeberg v. Health Servs. Acquisition Corp.*,486U.S.847, 864, 108S.Ct.2194, 100L.Ed.2d855 (1988). ("any reasonable doubts about the partiality of the judge ordinarily are to be resolved in favor of recusal.") *In re U.S.*, 441F.3d44, 56(1st Cir.2006).

No honest judge would ever presume his or her colleague was capable of bias without irrefutable evidence. The purpose of 28U.S.C.§455 is to preserve the *appearance* of an unbiased judiciary to the *public*, and it should be interpreted through the eyes of reasonable citizens as opposed to through the eyes of reasonable judges. Whether or not a District Court Judge should recuse when he has subject matter financial interest in a case, when he has previously on the bench supported policies of the organization employing him and his wife, when he alleges he cannot understand a complaint to which many others have understood and responded, and when he has shown an appearance of bias in favor of represented Respondent-Appellee-Defendants and against Plaintiff is an extremely important decision that this Court should resolve to set national precedent.

D. Certiorari Is Warranted To Consider If A Complaint That States A Claim Under Fed.R.Civ.P.12 Also Meets Fed.R.Civ.P.8 Requirements Because It Is

Contested Among The Circuits, Precedential, And Of National Significance.

The Seventh Circuit upheld Reinoehl's Complaints were "unintelligible" due to length. However, both the Seventh Circuit and District Court recognized Reinoehl had stated a claim under the ADA. This is in opposition to allegations it is "unintelligible," which means "impossible to understand."

This Court has ruled *pro se* litigants must follow all court procedures but has explained that Fed.R.Civ.P. 8 is to be interpreted liberally for them. See Fed.R.Civ.P. 8(e); *Conley*; *Haines v. Kerner*; *Erickson v. Pardus*. Reinoehl's Complaint is in many ways facially typical of *a pro se* Complaint. It is long—possibly using more pages to describe the case than a trained lawyer. It contains many defendants. It was filed with dozens of exhibits.

This Court has held that some cases require the heightened pleading standards of Fed.R.Civ.P. 9 and others must meet plausibility standards. (*Twombly*; *Iqbal.*) The heightened pleading standard of Rule 9 fits under the standard of Rule 8. *Id.* Having extra details and documented facts should not preclude Reinoehl from meeting Rule 8 requirements.

This Court has held that when there is direct evidence of discrimination, pleading deficiencies are overcome. "[T]he McDonnell Douglas test is inapplicable where the plaintiff presents direct evidence of discrimination." *Trans World Airlines, Inc. v. Thurston*, 469U.S.111(1985); *Teamsters v. United States*, 431U.S.324, 431U.S.358, n.44 (1977). "It seems incongruous to require a plaintiff, in order to survive a motion to dismiss, to plead more facts than he may ultimately need to prove to succeed on the merits if direct evidence of discrimination is discovered." *Swierkiewicz v. Sorema N.A.*, 534U.S.506 (2002).

In this case, Reinoehl submitted with both the FAC and SAC: (1) a copy of her doctor's note stating she could not wear masks for medical reasons, (2) affidavits from five witnesses who saw the harassment and discrimination she was subjected to, and (3) a DVD with recordings she made on her phone of some discrimination events. Further, all business defendants admitted their policies did not allow exemptions for the disabled and those government agencies that responded admitted they mandated Emergency Use Authorized masks.(App.169A-204A).

There are 16 Respondent-Appellee-Defendants represented by multiple lawyers—many of whom are from some of the nation's top law firms, including but not limited to lawyers from the U.S. Department of Justice. Two Respondent-Appellee-Defendants filed Answers to the Complaint and seven more filed Motions to Dismiss without moving for a more definite statement. The Motions to Dismiss show all Respondent-Appellee-Defendants were aware of why they were being sued:

> "According to Ms. Reinoehl, Krispy Kreme's alleged actions violated her rights under Title II of the Americans with Disabilities Act ("ADA") because she allegedly has asthma, and cannot wear a mask for very long." (App.170A).
>
> And,
>
> "Reinoehl alleges that Menard discriminated against her based on disability when it denied her entry to and from shopping at its Mishawaka, IN Menards store location. Reinoehl alleges Menard violated the Americans with Disability Act, Title II, specifically 42U.S.C.§12182(b)(1)(A)(iii)." (App.185A)
>
> And,
>
> "The allegations in Reinoehl's complaint relevant to the Elkhart County defendants and this Motion to Dismiss are as follows:
>
> Reinoehl alleges that during the COVID-19 pandemic, governmental entities, including the Elkhart County defendants, instituted mask mandates. Reinoehl alleges that statements made about the

> effectiveness of masks to stop disease transmission were based on circumstantial evidence...Reinoehl states that governmental entities falsely promoted that mask apparel was effective at stopping disease transmission but failed to promote that many people with disabilities could not wear a mask. Reinoehl alleges that she has a disability and is physically unable to wear a mask, and the mask mandates enacted by the governmental entities discriminated against people with disabilities, did not prevent people with disabilities from being harassed or denied entrance to businesses and public areas, and violated the Americans with Disabilities Act and the Fourth Amendment by requiring people with disabilities to provide documentation to exempt them from wearing masks. Reinoehl also alleges that the mask mandates encouraged discrimination and allowed businesses and governmental employees to ignore the exemptions. Reinoehl alleges the government defendants delivered public messages promoting mask-wearing, which encouraged discrimination against those medically unable to wear masks." (internal citations removed)(App.196A)

While alleging Reinoehl's complaints were "unintelligible," the District Court admitted it understood at least one claim:

> "For instance, she alleges the separate policies of Krispy Kreme, Menard, AMC Theaters, and Sephora violated the [ADA] by requiring her to wear a mask despite having asthma based on her separate interactions with each." (App.208A).
>
> "[Reinoehl] sued five private businesses—Beacon, AMC Theatres, Menard, Krispy Kreme, and Sephora—for violating the ADA." (App.11A).

And,

> "AMC Theatres and Sephora forbid entry into their businesses without a mask, with no exemptions." (App.11A).

The Seventh Circuit also understood at least one claim in the Complaint, stating

> "In any case, in her proposed amended complaints, Reinoehl alleged that as a person with disabilities, she was harmed by being forced to comply with mask mandates or forgo in-person participation in certain activities" (App.6A).

and concluded Reinoehl had standing to sue.

> "In order to survive dismissal for lack of standing, the plaintiffs'

> complaint must contain sufficient factual allegations of an injury resulting from the defendants' conduct, accepted as true, to state a claim for relief that is plausible on its face." *Diedrich v. Ocwen Loan Servicing, LLC*, 839F.3d583, 588 (7th Cir.2016). *Robertson v. Allied Sols., LLC*, 902F.3d690, 695 (7th Cir.2018).

Despite recognizing a claim, they upheld the District Court dismissal.

"The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome, and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley* at 48.

The District Court stated the Complaint was filled with "conclusory" statements and not facts, and the Seventh Circuit upheld that ruling redefining "unintelligible" as "vague, confusing, and conclusory."(App.3A, 176A-177A). Reinoehl uses both facts and conclusions. For example, ¶23, which is a fact:

> "In Vol. VII, Sec. B, No. 3, of the *Philippine Journal of Science* (June, 1912), Barber and Teague had lab assistants hold a bacteria solution in their mouths and then blow it out through ½-inch thick cloth masks identical to the ones used in described in ¶30-31 to simulate sneezing and coughing, directing the airflow at Petri dishes. The masks effectively stopped visible liquid droplets but the bacteria passed through to the petri dishes. This experiment proved to other scientists at the time that cloth masks can stop visible droplets without stopping bacteria. To compare, 168 of the largest COVID-19 viruses could fit inside the smallest bacteria used in the experiment, which easily got through ½-inch thick cloth masks." (App.31A).

And conclusions drawn from that and other facts:

> "Direct evidence from the above experiments showed that patients with diseases that are primarily "droplet" spread do not exhale a significant amount of bacteria (or viruses) when breathing. It is when they cough these germs come out of the body in large numbers. The experiments showed germs do not come out in the visible droplets that come out of the mouth when you cough—but rather the microscopic droplets. All the recent "scientific" photographs showing visible droplets coming out of human mouths ignore the real problem—which cannot be seen by the naked human eye." (App.32A).

However, she was extremely specific as opposed to vague and if anything was confusing, a

hearing would have allowed her to explain or answer questions. Without some conclusions, a complaint would be even more confusing.

The Seventh Circuit also stated that Reinoehl should have listed every single "Defendant" or "Government Defendant" each time she referred to them collectively and because she did not, she did not make a specific claim for relief against them.(App.5A). Reinoehl, however, defined collective terms—and the District Court and defendants also used them.(App.10A,197A,202A):

> "The CDC, Dr. Fauci, the FDA, Governor Holcomb, Dr. Box, the Marion City-County Council, Marion County Health Department, the St. Joseph County Council, the St. Joseph County Health Department, the Elkhart County Health Department, and the Elkhart County Council (herein collectively referred to as "Government Defendants")"(App.42A).

She specifically explained what each defendant did when they acted individually:

> "On February 5, 2020, Dr. Fauci stated in an e-mail to Sylvia Burwell: "The typical mask you buy in a drug store is not really effective in keeping out virus, which is small enough to pass through the material." (Exhibit 5). At the time, cloth and non-medical masks and facial coverings (herein referred to collectively as "non-medical masks" or "mask apparel") were not allowed to be sold in the United States. The masks Dr. Fauci was referencing were surgical masks, which are regulated by the FDA for breathability and effectiveness. Still, he maintained that the melt-blown fabric was not effective at preventing viral transmission because "virus...*is small enough to pass through the material*" [Emphasis added.]"(App.37A).

And

> "On or about April 9, 2021, Jennifer Reinoehl and her husband witnessed people walking into Menards without masks and so believed she would finally be allowed in the store. She was. Menards has an entry with turnstiles that directs foot traffic past the front customer service counter. Although there were employees behind this service counter and she never wore a mask, no one stopped her. After shopping an hour without a mask inside the store, as her and her family got into the checkout line, a store manager walked came over and told them they could not make purchases unless everyone put on a mask even though Plaintiff explained her disability."(App.70A).

And,

> "None of the Indiana Government Defendants are doctors specializing in infectious respiratory diseases. Of those who are doctors, Dr. Robert Einterz, Health Officer of the St. Joseph County Health Department, is an internist who focused on adults with HIV, Dr. Mark Fox, Deputy Health Officer of the St. Joseph County Health Department, is a cardiologist who specialized in diseases of the heart and medical ethics, Dr. Box, Indiana State Health Commissioner, is a gynecologist who focused on vaginal diseases and sexually transmitted diseases, Dr. Lydia Mertz, the former head of the Elkhart Health Department, is a bariatric doctor who specializes in obesity; Dr. Bethany Wait, current head of the Elkhart Health Department, is a family medicine practitioner."(App.90A).

This Court should determine if collective terms used in an effort to shorten the Complaint are acceptable under Rule 8 or if using collective terms is always a "kitchen sink approach."(App.3A).

Fed.R.Civ.P. 8 does not define "plain" and "short."(App.254A). It does not state a maximum page limit nor does it prohibit or limit attached exhibits.(App.254A). The District Court's opinion upheld by the Seventh Circuit was that a Complaint following Fed.R.Civ.P. 8 can have no more nor any less than what is needed to make a limited number of claims—against Fed.R.Civ.P. 8(d)(3), Fed.R.Civ.P. 9, *Twombly*, and *Iqbal*.(App.255). It leaves plaintiffs guessing how much detail is needed to state a claim under Rule 12(b)(6) without exceeding an undefined maximum limit that puts them in danger of Rule 8 violations. It also allows that maximum to vary across the nation.

Twombly and *Iqbal*, filed by represented plaintiffs, did not affect attorney represented plaintiffs, but they have been repeatedly used to dismiss *pro se* litigants. *Pro se* litigants do not have legal expertise to lay out plausible claims identical to the "short" and "plain" way of a trained lawyer. Here, Reinoehl alleges the CDC and FDA—two trusted health organizations—deliberately ignored laws and colluded for profit and

political gain to promote dangerous masks and discrimination. *Twombly, Iqbal,* and Fed.R.Civ.P. 9 demand additional facts. Here, the District Court ordered Reinoehl to remove facts necessary to defeat Fed.R.Civ.P. 12(b)(6) motions.

Reinoehl's Complaint made at least one valid, comprehensible ADA claim—recognized even by the Court of Appeals. However, whether a Complaint that can defeat a Rule 12(b)(6) Motion can at the same time violate Rule 8 is disputed. See *Swierkiewicz v. Sorema N.A.* (reversing the dismissal of the entire complaint as "broad and conclusory" where the complaint set forth four claims with adequate specificity); "[I]f the court understood the allegations sufficiently to determine that they could state a claim for relief, the complaint has satisfied Rule 8." *Kittay v. Kornstein*, 230F.3d531, 541(2d Cir.2000). *Garrett v. Wexford Health*, 938 F.3d69, 94 (3d Cir. 2019)(concluding "[E]ven if it is vague, repetitious, or contains extraneous information, a pro se complaint's language will ordinarily be "plain" if it presents cognizable legal claims to which a defendant can respond on the merits.") *Simmons v. Abruzzo*, 49F.3d83 at 87-88 (2d Cir.1995) (holding that "[t]hough perhaps some details [were] lacking" and "extraneous details" were included, "it [was] evident that defendants understood the nature of Simmons's claims" based on their response to it). Cf. *McHenry v. Renne*, 84F.3d1172, 1179(9th Cir.1996) (stating "The propriety of dismissal for failure to comply with Rule 8 does not depend on whether the complaint is wholly without merit. The magistrate was able to identify a few possible claims which were not, on their face, subject to being dismissed under Rule 12(b)(6).")

CONCLUSION

Reinoehl knows this Court is extremely busy. Reinoehl also knows that her

Complaint is long, but Reinoehl begs this Court to please issue a Writ of Certiorari. In addition to the questions in this Petition, which all have national importance and which once they are answered for this case will set precedent for other cases, Reinoehl's Complaint, itself, has national importance because although she was discriminated against in two states across two U.S. Districts, millions of others were also harassed and discriminated against because of their medical disabilities and those citizens sit in fear that during the next flu season or the next round of COVID-19, they will have to live through that hatred, harassment, and discrimination all over again. Many of them may have struggled to find a lawyer to represent them, as Reinoehl did, and none of the persons whom Reinoehl personally knows who suffered this discrimination have the ability, knowledge, or stamina to file a lawsuit on their own behalf. Others, who have tried to file *pro se* complaints are being kicked out for failure to state a claim because "Defendants are not required by the ADA to alter their mask policy for the [disabled]." *Hernandez v. Hunger*, No.3:21-CV-00055-DCG (W.D.Tex. Apr.22, 2021), see also *Cangelosi v. Sizzling Caesars LLC*, No.CV20-2301, 2021WL291263 at*3 (E.D.La. Jan.28, 2021), *Pro se* litigants spend a lot of time and sometimes also a good portion of their incomes on filing cases and appeals.

Since Hon. Damon Leichty began writing orders in this case, Reinoehl has understood one thing: the District Court is very angry with her. However, Reinoehl does not understand why. Unlike the Defendants, at the time Hon. Damon Leichty wrote his first order striking her entire Complaint and denying her the right to file a FAC, Reinoehl had not filed anything late nor disobeyed any Court orders—nor even requested an extension of time to file anything—even when she had to respond to several Motions all on

the same day.

Reinoehl, like many other citizens who end up filing *pro se*, just wants her case to be heard. For the foregoing reasons, this Writ of Certiorari should be granted.

Respectfully submitted,

2/20/23

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CERTIFICATE OF COMPLIANCE

I verify that this brief contains no more than 9,000 words in compliance with Supreme Court Rule (33).

I verify that this brief contains 8,924 words according to the word count provided by Microsoft Office Home and Business 2019, excluding those portions exempted by Supreme Court Rule (33)(9). It was prepared in proportionally spaced typeface using Century Schoolbook 12-point font in accordance with Supreme Court Rule 33(b).

4/20/23

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