No.

In the
Supreme Court of the United States

JEFFREY PRATT,
Petitioner,

v.

SHERIFF TONY HELMS, CAMDEN COUNTY SHERIFF IN HIS OFFICIAL CAPACITY; LIEUTENANT JOE BOTTA; SHERIFF'S DEPUTY BILL MULLINS; DETECTIVE ROGER SLOAN,
Respondents.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Eighth Circuit, in contravention to the Federal Rules of Civil Procedure and the precedent set forth by this Court in *Johnson v. City of Shelby*, 574 U.S. 10 (2014), impermissibly reestablished the long-abolished pleadings doctrine which will bar Americans from litigating meritorious claims.

2. Whether the current circuit split is the result of courts, including the Eighth Circuit, impermissibly using dicta to expand the limited holding in *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591 (2008), to cases outside of the government employment context to overrule this Court's holding in *Willowbrook v. Olec*h, 528 U.S. 562 (2000), which will now allow bad government actors to engage in unchecked, unconstitutional behavior.

LIST OF DIRECTLY RELATED PROCEEDINGS

1. *Jeffrey Pratt v. Sheriff Tony Helms, Camden County Sheriff in his official capacity; Lieutenant Joe Botta; Sheriff's Deputy Bill Mullins; Detective Roger Sloan*, District Court Case No. 4:20-cv-00816-SRB, United States District Court for the Western District of Missouri-Kansas City (final judgment after district court granted summary judgment to the defendants and denied defendants' motion to dismiss as moot entered on August 24, 2022).

2. *Jeffrey Pratt v. Sheriff Tony Helms, Camden County Sheriff in his official capacity; Lieutenant Joe Botta; Sheriff's Deputy Bill Mullins; Detective Roger Sloan,* Eighth Circuit Case No. 22-3002, United States Court of Appeals for the Eighth Circuit (memorandum vacating the district court's grant of summary judgment and remanding with instructions to dismiss the federal claims for lack of standing and affirming the judgment of the district court as to the state law claims entered on July 12, 2023).

3. *Jeffrey Pratt v. Sheriff Tony Helms, Camden County Sheriff in his official capacity; Lieutenant Joe Botta; Sheriff's Deputy Bill Mullins; Detective Roger Sloan,* Eighth Circuit Case No. 22-3002, United States Court of Appeals for the Eighth Circuit (order denying the petition for rehearing and rehearing en banc entered on August 16, 2023).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitution and Statutes

Rules

Other Authorities

PETITION FOR WRIT OF CERTIORARI

Petitioner Jeffrey Pratt respectfully petitions for a writ of certiorari to review the decision and judgment of the United States Court of Appeals for the Eighth Circuit in this case, or in the alternative, Petitioner respectfully requests that this Honorable Court summarily reverse the decision and judgment of the United States Court of Appeals for the Eighth Circuit pursuant to Supreme Court Rule 16.

OPINIONS BELOW

The United States Court of Appeals for the Eighth Circuit issued its published opinion on July 12, 2023, and is reproduced at App.1-7. The opinion of the United States Court of Appeals for the Eighth Circuit is available at *Pratt v. Helms*, 73 F.4th 592 (8th Cir. 2023). The Eighth Circuit summarily denied a Petition for Rehearing and Rehearing En Banc without rendering an opinion on August 16, 2023. App.25. On August 24, 2022, the District Court granted Defendants' motion for summary judgment dismissing the case with prejudice and denying the Defendants' motion to dismiss as moot. App.8-22. The opinion and order is available at *Pratt v. Helms,* No. 20-cv-00816-SRB, 2022 U.S. Dist. LEXIS 151869 (W.D. Mo. Aug. 24, 2022). App.8-22. The judgment of the United States District Court for the Western District of Missouri is unreported. App.23-24.

JURISDICTION

The Eighth Circuit issued its opinion on July 12, 2023. App.1-7. Petitioner filed a timely Petition

for Rehearing and Rehearing En Banc with the Eighth Circuit and the Eighth Circuit denied the Petition for Rehearing and Rehearing En Banc on August 16, 2023. App.25. This Court has jurisdiction under 28 U.S.C. §1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment of the United States Constitution provides in relevant part:

> 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.

U.S. Const. amend. XIV.

42 U.S.C. §1983 provides in relevant part:

> 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.

42 U.S.C. §1983.

STATEMENT OF THE CASE

1. Factual and Procedural History

Mr. Pratt brought the instant action against Defendants Sheriff Tony Helms, Camden County Sheriff in his official capacity; Lieutenant Joe Botta; Sheriff's Deputy Bill Mullins; Detective Roger Sloan detailing that his constitutional rights to access to the courts and equal protection under the law were violated when the Defendants intentionally covered up a crime in order to shield his assailants from liability. Mr. Pratt asserted causes of action for violations of the U.S. Constitution, the Missouri Constitution, claims pursuant to 42 U.S.C. §1983, and civil conspiracy. The action was brought before the United States District Court for the Western District of Missouri which had jurisdiction because the case was brought pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343 as a result of claims arising under 42

U.S.C. §1983, and the Fourteenth Amendment of the United States Constitution. The District Court had supplemental jurisdiction over causes of action arising under Missouri State laws pursuant to 28 U.S.C. §1367(a). On August 24, 2022, the District Court granted Defendants' motion for summary judgment dismissing the case with prejudice and denying the Defendants' motion to dismiss as moot. App.8-22. A Final Judgment in favor of Defendants dismissing the case with prejudice and denying the Defendants' motion to dismiss as moot was entered on August 24, 2022. App.23-24. On September 21, 2022, Plaintiff filed a timely Notice of Appeal with respect to the Order rendered on August 24, 2022, and the related judgment entered on August 24, 2022. Jt.App. 191; R. Doc. 52.[1] The United States Court of Appeals for the Eighth Circuit had jurisdiction to hear the appeal under 28 U.S.C. §1291. On July 12, 2023, the United States Court of Appeals for the Eighth Circuit issued a published opinion vacating the district court's grant of summary judgment and remanding with instructions to dismiss the federal claims for lack of standing and affirming the judgment of the district court as to the state law claims. App.1-7. Petitioner filed a timely Petition for Rehearing and Rehearing En Banc with the Eighth Circuit and the Eighth Circuit denied the Petition for Rehearing and Rehearing En Banc on August 16, 2023. App.25.

Mr. Pratt's Complaint filed in the District Court explicitly stated factual allegations detailing how the Camden County Sheriff's Department, and certain

[1] Citations in the form "Jt.App._; R. Doc._, at _" are to the record entries in the Joint Appendix filed in the Eighth Circuit.

named individuals therein, engaged in a continuing pattern of conduct to cover up a crime so that politically connected assailants could never be held criminally or civilly liable. Jt.App. 7-21; R. Doc. 1, at 1-15. The Complaint details in relevant part the following:

Mr. Pratt was violently assaulted one evening leaving him with serious and permanent injuries to his body including a traumatic brain injury. Jt.App. 10; R. Doc. 1, at 4. Mr. Pratt believed that he had been physically assaulted by his daughter's ex-boyfriend along with the ex-boyfriend's cousin. Jt.App. 9-10; R. Doc. 1, at 3-4. Mr. Pratt details how his daughter was followed home by her ex-boyfriend and when he went outside to investigate, he saw the ex-boyfriend's cousin approaching him. Jt.App. 9-10; R. Doc. 1, at 3-4. He then heard a sound behind him before everything went dark. Jt.App. 10; R. Doc. 1, at 4.

After Mr. Pratt's significant incapacitation due to his traumatic brain injury, on May 8, 2012, he reported the incident to local law enforcement – the Camden County Sheriff's Department. Jt.App. 10; R. Doc. 1, at 4. Mr. Pratt cooperated with the investigation, but no charges ever resulted. Jt.App. 11; R. Doc. 1, at 5.

The alleged suspects who were identified by Mr. Pratt "were related to a Camden County judicial clerk" who held "an extremely important and powerful position in Camden County." Jt.App. 10; R. Doc. 1, at 4. Upon information and belief, at the time this county only had one judicial clerk who "regularly interacted

with all the circuit judges, attorneys, and law enforcement including the Camden County Sheriff's Department." Jt.App. 10; R. Doc. 1, at 4. Despite this fact, Camden County was purportedly investigating the allegations. Jt.App. 11; R. Doc. 1, at 5.

In 2014, however, the sitting Camden County prosecutor lost his election and the new prosecutor decided that their office should not handle the matter because of the numerous conflicts it presented. Jt. App. 11; R. Doc. 1, at 5. The new prosecutor reasoned that the familial relationship between the two alleged assailants and the judicial clerk simply presented too many conflicts, and on January 16, 2015, transferred the matter to the Missouri Attorney General's office. Jt.App. 11; R. Doc. 1, at 5. The Missouri Attorney General's office elected not to charge the individuals for Mr. Pratt's assault and "indicated that there was not enough evidence collected to charge the parties" by the Camden County Sheriff's Department. Jt.App. 11; R. Doc. 1, at 5.

As Mr. Pratt's injuries were severe and resulted in extensive medical bills, Mr. Pratt filed suit in civil court to recover damages against his alleged assailants. Jt.App. 11; R. Doc. 1, at 5. On June 5, 2019, during discovery in that civil action, a deposition of a "former Camden County law enforcement officer disclosed that she had been instructed to not investigate [Mr. Pratt's] alleged assault because of the familial relation between the clerk for the circuit judges and one of the individuals accused of the crime and that the other officers were doing the same." Jt.App. 12; R. Doc. 1, at 6. During that deposition, it

was disclosed that the Defendants named in the instant action were the individuals "who told her not to investigate as they were trying to cover up the crime and that her assignment to the case was only to give the appearance that the case was being investigated into although it was not." Jt.App. 12; R. Doc. 1, at 6. Mr. Pratt learned that the Camden County Sheriff's Department intentionally tried to "derail an investigation and instruct[ed] others to do the same all while fraudulently concealing their crime by failing to file proper reports and providing false information in the reports which were produced creating a false paper trail allowing [Mr. Pratt's] assailants to escape responsibility." Jt.App. 12-13; R. Doc. 1, at 6-7. Mr. Pratt spends pages of his Complaint detailing how the Defendants falsified records, omitted materials, and allowed evidence to be destroyed in order to shield his assailants. Jt.App. 15-19; R. Doc. 1, at 9-13.

The Complaint sets forth that the Defendants' "actions were taken to make it impossible for Plaintiff to pursue charges against his alleged assailants or discover the illegal actions of the officers in the cover up of the crime." Jt.App. 12; R. Doc. 1, at 6. Mr. Pratt alleged that the Defendants engaged in an intentional scheme to insulate the individuals who viciously assaulted Jeffrey Pratt from any culpability because Mr. Pratt's purported assailants had a familial relationship with a judicial clerk in the county. Jt.App. 12; R. Doc. 1, at 6. Mr. Pratt alleged that members of the Camden County Sheriff's Department intentionally hid the identity of his assailants and feigned an investigation so that the criminal actions of these assailants would never be brought to light so

that justice may be had in this case. Jt.App. 11-21; R. Doc. 1, at 5-15. Mr. Pratt also alleged that this shocking cover up also constituted a conspiracy to fraudulently conceal a crime. Jt.App. 11-21; R. Doc. 1, at 5-15. Jeffrey Pratt detailed that he "was not treated the same as other crime victims because of the nepotism and familial relations of the alleged assailants and was thereby deprived of equal protection of the law without due process and such defendant officers knew such actions were illegal at the time they took them." Jt.App. 14; R. Doc. 1, at 8.

Shockingly, Officer Stone further explained that her "request for additional information would not be honored because the department was trying to cover up for the alleged assailant and protect him rather than the alleged victim." Jt.App. 17; R. Doc. 1, at 11. Mr. Pratt reiterated this was not a negligent investigation but rather an intentional cover up of a crime with several conspiratorial actors. Jt.App. 19-20; R. Doc. 1, at 13-14. Jeffrey Pratt, as a victim of a brutal crime, had a right to criminal restitution, but was deprived of due process because of the unconstitutional actions of the Defendants in this case. Jt.App. 21; R. Doc. 1, at 15. Mr. Pratt's medical bills are in excess of $25,000.00 due to the brutal assault that inflicted severe brain trauma upon him. Jt.App. 21; R. Doc. 1, at 15.

On July 20, 2022, Defendants filed a motion to dismiss and a motion for summary judgment seeking a dismissal of the Complaint. Jt.App. 40; R. Doc. 42, at 1; Jt.App. 56; R. Doc. 44, at 1. Mr. Pratt filed

opposition to both motions. Jt.App. 82; R. Doc. 46, at 1; Jt.App. 102; R. Doc. 47, at 1.

The District Court granted Defendants' motion for summary judgment, dismissed the Complaint with prejudice and denied as moot the Defendants' motion to dismiss. App.8-22. In rendering its decision, the District Court has never addressed the civil conspiracy claim and that claim remained unaddressed and unresolved by the District Court. App.8-22. On August 24, 2022, the Clerk of Court entered a judgment in favor of the Defendants. App.23-24. On September 21, 2022, Mr. Pratt filed a timely Notice of Appeal with respect to the Order rendered on August 24, 2022, and the related judgment entered on August 24, 2022. Jt.App. 191; R. Doc. 52. On appeal, a Panel of the Eighth Circuit rendered a decision that vacated the grant of summary judgment to the Defendants and remanded with instructions to dismiss for lack of standing based upon the arguments raised in the Motion to Dismiss. App.1-7. The decision again never addressed the civil conspiracy claim that remained unresolved by the District Court. App.1-7. The decision of the Eighth Circuit was rendered on July 12, 2023. App.1-7. Mr. Pratt sought rehearing and rehearing en banc arguing that the decision of the Eighth Circuit was in direct contravention of this Honorable Court's precedent. The Eighth Circuit denied the Petition for Rehearing and Rehearing En Banc on August 16, 2023. App.25.

2. How the federal question sought to be reviewed was raised.

In his Complaint, Mr. Pratt alleged violations of his civil rights pursuant to 42 U.S.C. §1983 detailing how his constitutional right to equal protection under the law and his due process rights were violated by Defendants when they engaged in an intentional cover up of a crime to protect his politically connected assailants from ever being held civilly or criminally liable. Jt.App. 7-21; R. Doc. 1, at 1-15. In opposition to a motion to dismiss, Petitioner argued that his right to equal protection under the law was violated because he was discriminated against because he "was in a class of people/citizens who do not work for the government of Camden County or is not related to a government official." Jt.App. 84-85; R. Doc. 46, at 3-4. In that opposition, Petitioner also raised the issue that his right to access to the courts was violated stating that his substantive and procedural due process rights were violated because Defendants violated "his civil rights during the investigation so that no prosecution could take place either civilly or criminally." Jt.App. 84-85; R. Doc. 46, at 3-4. Petitioner argued that the Defendants' intentional cover up of the crime "frustrated both the Attorney General's attempts to pursue criminal charges and Plaintiff's attempts to prevail in a civil action in state court." Jt.App. 84-85; R. Doc. 46, at 4-5. On direct appeal to the United States Court of Appeals for the Eighth Circuit, the Petitioner argued that his constitutional right of access to the courts and his equal protection rights were violated by Defendants. Appellant's Opening Brief, pp. 22-35. Petitioner again raised these claims

in his Petition for Rehearing and Rehearing En Banc. *See* Petition for Rehearing and Rehearing En Banc.

REASONS FOR GRANTING THE WRIT

The Eighth Circuit's decision creates a dangerous precedent that gives police departments carte blanche authority to cover up crimes for the politically connected and would allow corruption to run amok. Rather than addressing the dangers of allowing a police force to treat the politically connected as a special class of citizens, the Eighth Circuit has created a precedent wherein any act that can be couched as discretionary is nonactionable. This precedent is a flagrant distortion of the precedent of this Honorable Court in both the treatment of pleading requirements in a complaint and the application of the Equal Protection Clause of the Fourteenth Amendment. The Eighth Circuit's holding establishes a new precedent that allows for criminal acts to go unpunished either criminally or civilly based upon the illogical reasoning that when a police department purposefully destroys evidence and fabricates reports, the inherent "discretion" given to the police department on how to conduct its investigations makes this egregious, illicit conduct permissible. Such a dangerous holding will destroy the fabric of American constitutional rights. A fundamental concern of the Constitution has always been overreach by the government. The Eighth Circuit has now implicitly overruled this Court's precedent regarding pleading requirements in one portion of their decision and in another portion of its decision has now joined other circuits to permit

flagrant violations of the equal protection clause if the acts are cloaked under the guise of a "discretionary" act. The danger of this precedent is palpable. While the insulation of public employees from unfettered liability is a practicable concern so that they are not inundated with frivolous lawsuits, this concern must be balanced with protecting the constitutional rights of the people. Allowing unchecked constitutional violations by government actors under the cloak of discretion with no redress is dangerous and improper, and countenancing such improper behavior as "discretionary" is patently absurd. As Thomas Jefferson once observed "when once a republic is corrupted, there is no possibility of remedying any of the growing evils but by removing the corruption and restoring its lost principles; every other correction is either useless or a new evil."[2]

[2] Thomas Jefferson quoting Charles de Secondat, Baron de Montesquieu, The Spirit of the Laws 173 (Thomas Nugent trans., D. Appleton & Co. 1900).

I. In contravention to the Federal Rules of Civil Procedure and the precedent set forth by this Court in *Johnson v. City of Shelby*, 574 U.S. 10 (2014), the Eighth Circuit impermissibly reestablished the long-abolished pleadings doctrine with regard to Petitioner's constitutional claim of access to the courts. The reinstallation of this old doctrine will deprive litigants of their day in court even if they have meritorious claims.

In reaching its decision, the Eighth Circuit flagrantly disregarded and effectively overruled the established precedent of this Honorable Court reestablishing the pleadings doctrine – a doctrine abolished by the Federal Rules of Civil Procedure. The U.S. Supreme Court has explicitly held "[f]ederal pleading rules call for 'a short and plain statement of the claim showing that the pleader is entitled to relief,' Fed. Rule Civ. Proc. 8(a)(2); they do not countenance dismissal of a complaint for imperfect statement of the legal theory supporting the claim asserted." *Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014). Despite this clear and established precedent, the Eighth Circuit dismissed Mr. Pratt's action while acknowledging that "Pratt mentions the Due Process Clause in his complaint and alleges that the defendants' actions 'ma[de] it impossible for [him] to pursue charges against his alleged assailants.' Yet he never pleaded a violation of his right to access [to] the courts, so this theory does not support standing." App.6, n.2.

The Eighth Circuit's decision has effectively reinstated the old pleadings doctrine which was abolished by the federal rules. The federal rules and the clearly established precedent of this Honorable Court explicitly provide that "[t]he federal rules effectively abolish the restrictive theory of the pleadings doctrine, making it clear that it is unnecessary to set out a legal theory for the plaintiff's claim for relief." *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014)(citations omitted). This Honorable Court has explained that its decisions in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), concern the *factual* allegations in a complaint and require a plaintiff to state "simply, concisely, and directly events that, they alleged, entitled them to damages" and once the plaintiff sets forth the "factual basis for their complaint, they were required to do no more to stave off threshold dismissal for want of an adequate statement of their claim." *Johnson v. City of Shelby*, 574 U.S. 10, 12 (2014). Even in rendering its decision, the Eighth Circuit explicitly points out that "Mr. Pratt mentions the Due Process Clause in his complaint and alleges that the defendants' actions 'ma[de] it impossible for [him] to pursue charges against his alleged assailants.'" App.6, n.2. This acknowledgment alone demonstrates that the factual allegations set forth a constitutional claim of access to the courts.

Indeed, Mr. Pratt's Complaint contains explicit details of how the Sheriff's Department was orchestrating a scheme to cover up the crimes of the politically connected. Mr. Pratt spends pages

detailing how each named officer engaged in the scheme setting forth specifically each officer's actions. Jt.App. 7-21; R. Doc. 1, at 1-15. Mr. Pratt's Complaint details how the Sheriff's Department engaged in a pattern of conduct that deprived him of his constitutional right of access to the courts in an attempt to preclude not only criminal restitution, but also the chance at any recovery from his assailants in a civil suit. Jt.App. 7-21; R. Doc. 1, at 1-15. Clearly, Mr. Pratt's factual allegations detailed the events which denied him access to the courts, yet the Eighth Circuit faults Mr. Pratt for failing to rephrase "the defendants' actions 'ma[de] it impossible for [him] to pursue charges against his alleged assailants" into the exact legal terminology of denial of access to the courts. The Eighth Circuit's new holding has now brought back an old holding that was abolished many years ago and of course, this will injure citizens on a nationwide basis.

This Court has acknowledged "[t]he right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship." *Chambers v. Balt. & O. R. Co.*, 207 U.S. 142, 148 (1907). Federal courts have further explained "[t]he right of access to the courts is well-established…[t]he right applies not only to the actual denial of access to the courts, but also to situations in which the plaintiff has been denied meaningful access by some impediment put up by the defendant." *Scheeler v. City of St. Cloud*, 402 F.3d 826, 830 (8th Cir. 2005). Additionally, "[a] corollary of this

right is that efforts by state actors to impede an individual's access to courts or administrative agencies may provide the basis for a constitutional claim under 42 U.S.C. § 1983." *Vasquez v. Hernandez*, 60 F.3d 325, 328 (7th Cir. 1995). "Judicial access must be 'adequate, effective, and meaningful,'…and therefore, when police officers conceal or obscure important facts about a crime from its victims rendering hollow the right to seek redress, constitutional rights are undoubtedly abridged." *Vasquez v. Hernandez*, 60 F.3d 325, 328 (7th Cir. 1995)(citations omitted). The federal courts have routinely held that a purposefully thwarted investigation and/or police malfeasance can form the basis of a federal §1983 claim by denying access to the courts and the law further holds "that an allegation of delay alone is sufficient to state a denial of access claim." *Klinger v. City of Chi.*, No. 15-CV-1609, 2017 U.S. Dist. LEXIS 26653, at *37 (N.D. Ill. Feb. 24, 2017). This is because "possibilities for error multiply rapidly as time elapses between the original facts and its judicial determination." *Vasquez v. Hernandez*, 60 F.3d 325, 331 (7th Cir. 1995). Finally, "[m]alfeasance can support a denial of access claim" – "such as a police evidentiary coverup." *West v. Brankel*, No. 13-3237-CV-S-DGK, 2015 U.S. Dist. LEXIS 5447, at *21 (W.D. Mo. Jan. 16, 2015).

While it is understood that courts are wary of exposing municipalities to liability, the law under 42 U.S.C. §1983 was established for the purpose of exposing municipalities to liability for the important purpose of deterring constitutional violations by state actors. The language of 42 U.S.C. §1983 provides in

relevant part that state actors who cause "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…." 42 U.S.C. §1983. The assessment of damages against government actors was one of the fundamental avenues of deterrence of constitutional violations. *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986)(noting that deterrence is an important purpose of §1983 damages); *Hardin v. Straub*, 490 U.S. 536, 539 (1989)(stating that one of §1983's chief goals is "compensation and deterrence"). The actions of this Sheriff's Department were the precise form of corrupt violation of constitutional rights the statute intended to curtail. Moreover, Mr. Pratt's case does not open up police departments to unfettered liability. Mr. Pratt did not sue the Sheriff's Department on the suspicion that they were not investigating his case. Mr. Pratt did not speculate that the police were engaging in a coverup by tampering with police reports and setting in motion a purposeful orchestration of events for the destruction of evidence. Mr. Pratt only filed suit after an officer who worked on the investigation essentially became a whistleblower and testified at a deposition that the officers were purposefully tampering with the investigation to protect the politically connected. The Constitution was first and foremost concerned with individual rights being paramount and not subjected to oppressive and unfair state action. Congress understood this fundamental concern and drafted 42 U.S.C. §1983 to further protect individual's

constitutional rights by creating a liability standard to deter these types of flagrant constitutional violations. The Eighth Circuit's dangerous precedent simply should not be allowed to stand.

Moreover, the precedent established by this Court in *Twombly* and *Iqbal* clearly establish a legal precedent that protects municipalities against unfettered lawsuits against police and their officers based upon speculation and/or suspicions. In *Twombly*, this Court explicitly held that in a complaint, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). This pleading standard does not require "heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court clarified the appropriate pleading standard in setting forth a two-pronged approach for courts deciding a motion to dismiss. The Supreme Court instructed district courts that "[w]hile legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* at 679. The Court further explained that if a complaint contains "well pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Id.* The Court made clear that "well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." *Id.*

Clearly, the holdings in *Twombly* and *Iqbal* allay any fears of unfettered municipal liability based

upon mere dissatisfaction with police investigations or suspicions that the police are acting with ill-will. Mr. Pratt's factual pleadings clearly go well beyond any speculative musings. Mr. Pratt filed suit giving detailed information that the police were purposefully protecting the politically connected in an attempt to preclude Mr. Pratt from obtaining any justice under the laws. His knowledge of what occurred and how his case was handled was recounted to him by a police investigator in the case who, during a sworn deposition, detailed that the actions taken against Mr. Pratt were purposeful and outside the bounds of any legitimate purpose despite being done under the color of state law. In his Complaint, Mr. Pratt clearly details factual allegations supporting a legal theory of denial of access to the courts. Mr. Pratt's Complaint specifically alleges that Mr. Pratt "discovered that members of the Camden County Sheriff's Department intentionally hid the identity of the assailants, intentionally failed to follow proper protocol in investigating the crime against him and did so in an attempt to hide both the crime and their conspiracy to fraudulently conceal such a crime." Jt.App. 11; R. Doc. 1, at 5. Mr. Pratt recounts that a deposition of a "former Camden County law enforcement officer disclosed that she had been instructed to not investigate [Mr. Pratt's] alleged assault because of the familial relation between the clerk for the circuit judges and one of the individuals accused of the crime and that the other officers were doing the same." Jt.App. 12; R. Doc. 1, at 6. During that deposition, it was disclosed that the Defendants named in the instant action were the individuals "who told her not to investigate as they were trying to cover up the crime

and that her assignment to the case was only to give the appearance that the case was being investigated into although it was not." Jt.App. 12; R. Doc. 1, at 6. Mr. Pratt's Complaint clearly alleges facts that the Defendants used their position as officers to cover up a crime and prevent Mr. Pratt from obtaining evidence against his assailants.

Additionally, the appeal before the Eighth Circuit was based upon the improper grant of summary judgment to the Defendants in this action. In fact, the Eighth Circuit agreed that the grant of summary judgment was improper and reversed on that ground. The malfeasance of the Sheriff's Department was further highlighted in the summary judgment papers which were before the Eighth Circuit. Indeed, the papers in opposition to summary judgment only bolstered the allegations in the Complaint. The opposition papers provided the powerful whistleblower testimony of Officer Stone and the unrebutted Expert Report which states the Defendants' actions were clear evidence of malfeasance. Mr. Pratt clearly set forth that the Defendants purposefully thwarted his investigation to protect politically connected individuals. Officer Stone, an officer assigned to the Pratt investigation, shockingly revealed "when I took all of my information to Lieutenant Botta, we had a conversation, and he explained to me …that with that much influence there's absolutely no way I was going to get the – or the prosecutor to file charges…And that's when I pretty much just stopped." Jt.App. 125-26; R. Doc. 47-2, at 6-7. The Expert Report detailed that one of the named Defendants never interrogated the suspects,

and by not moving quickly enough, allowed the suspect's vehicle to be "conveniently junked two weeks after the investigation was initiated." Jt.App. 117; R. Doc. 47-1, at 2. This is not indicative of a botched investigation, as benignly suggested by the Defendants – a favorable inference impermissibly given to the Defendants by the District Court. Rather, this testimony shows an intentional action to prevent Mr. Pratt from accessing the courts.

Incredibly, in an attempt to protect the Sheriff's Department from liability in this case, the Eighth Circuit implicitly overruled its own established precedent which expressly states "[t]he well-pleaded facts alleged in the complaint, not the legal theories of recovery or legal conclusions identified therein, must be viewed to determine whether the pleading party provided the necessary notice and thereby stated a claim in the manner contemplated by the federal rules." *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848 (8th Cir. 2014)(citing *Parkhill v. Minn. Mut. Life Ins. Co.*, 286 F.3d 1051, 1057-58 (8th Cir. 2002). In fact, the prior precedent of the Eight Circuit was aligned with this Honorable Court's precedent stating that the law holds that "[t]he failure in a complaint to cite a statute, or to cite the correct one, in no way affects the merits of the claim. Factual allegations alone are what matters." *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848 (8th Cir. 2014)(citation omitted). Indeed, the Eighth Circuit had previously taken the legal position that "a complaint should not be dismissed merely because a plaintiff's allegations do not support the particular legal theory he advances, for the court is under a duty

to examine the complaint to determine if the allegations provide for relief on any possible theory." *Bramlet v. Wilson*, 495 F.2d 714, 716 (8th Cir. 1974). Despite its prior precedent and the explicit holding by this Honorable Court in *Johnson*, the Eighth Circuit has turned the legal tables and reinstated a pleading requirement that was abolished long ago.

Despite the clear factual allegations in the Complaint and the additional proof provided in opposition papers to summary judgment, the Eighth Circuit eviscerated Mr. Pratt's case for not using the exact language of "access [to] the courts." App.6, n.2. No such language is required under the law. Instead, in assessing a motion to dismiss, the Court is required to review a motion to dismiss "*de novo*, accepting as true the complaint's factual allegations and granting all reasonable inferences to the non-moving party." *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 591 (8th Cir. 2009). Indeed, attempting to couch Mr. Pratt's allegations as one that failed to put the Defendants on notice that Mr. Pratt was making a claim for denial of access to the courts requires the reader to disregard the bulk of the factual allegations asserted in the Complaint and the additional facts provided in the summary judgment papers before the Court. Again, the Eighth Circuit readily acknowledges "Pratt mentions the Due Process Clause in his complaint and alleges that the defendants' actions 'ma[de] it impossible for [him] to pursue charges against his alleged assailants.'" App.6, n.2. Moreover, the law expressly provides that leave to amend should be freely given. *Chesnut v. St. Louis Cty.*, 656 F.2d 343, 349 (8th Cir. 1981). In his

opposition to the Motion to Dismiss, Mr. Pratt expressly requested leave to amend. Jt.App. 90; R. Doc. 46, at 9. Given the detailed factual allegations in the Complaint coupled with the documentary evidence provided in opposition to the Motion for Summary Judgment, Mr. Pratt should have been granted leave to amend to add the exact language of the legal theory of "denial of access to the courts" to comport with the Eighth Circuit's reinstatement of the previously abolished pleadings doctrine.

The Eighth Circuit's requirement that their preferred language must be used for a viable claim harkens back to law that is no longer in use. Such a draconian requirement will destroy the rights of countless litigants in federal court. We cannot allow a dangerous, bygone doctrine to be reinstalled into the federal courts. This Honorable Court must remind the federal courts that the right of access to the courts cannot be thwarted by government actors nor a judiciary that requires their preferred language be cited in order to bring an action in federal court.

II. The Eighth Circuit has impermissibly used dicta to expand the limited holding in *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591 (2008), to cases outside of the government employment context to overrule this Court's holding in *Willowbrook v. Olec*h, 528 U.S. 562 (2000), joining other circuits in the creation of a circuit split warranting this Court's review.

The Eighth Circuit has joined other circuits that have inappropriately carved out an exception to this Court's precedent established in *Willowbrook v. Olech*, 528 U.S. 562 (2000), dangerously creating a blanket exception to the Equal Protection Clause where government actors purportedly act under the guise of discretion. In its decision, the Eighth Circuit refused to engage in any analysis of the claims of malfeasance of the Sheriff's Department holding that Mr. Pratt has no standing to bring a class-of-one equal protection claim, reasoning that the discretion given to police precludes any equal protection claims. App.5. The Eighth Circuit, along with other circuit courts, has effectively overruled the precedent established by this Honorable Court which has "recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)(citations omitted). There is now a resulting circuit split with some jurisdictions adhering to the clear holding established by this Court

in *Olech* and others carving out numerous exceptions to the rule by impermissibly expanding the expressly limited holding in *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591 (2008). In *Engquist*, this Court was unequivocal in announcing that its holding was limited to finding "the class-of-one theory of equal protection has no application in the public employment context—and that is all we decide…" *Engquist*, 553 U.S. at 607(emphasis added). Indeed, this Court's subsequent holdings have clearly reiterated that the holding in *Engquist* draws a distinction between "citizen employees" and "citizens at large." *NASA v. Nelson*, 562 U.S. 134, 148-49 (2011); *Fulton v. City of Phila.*, 141 S. Ct. 1868, 1878 (2021). Despite the clear direction given by this Court, numerous circuit courts have impermissibly expanded on the dicta from *Engquist* to carve out dangerous exceptions to the Equal Protection guarantee afforded to the citizens at large.

While *Engquist* was explicitly limited to government employment, a number of circuit courts have used the dicta from the decision to maintain that the class-of-one theory of equal protection simply does not apply to any governmental act that has an element of discretion. This was not the holding in *Engquist*. In *Engquist*, this Court engaged in a discussion of discretion that is inherent in every employment decision by the government. *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591 (2008). The Court then used an example of a police officer blindly giving tickets as an example to make a point about opening up speculative litigation over discrimination and equal protection. *Id.* at 603. This Court was very careful in crafting that

example to explicitly state that the example of a police officer ticketing was only in the context of blindly issuing tickets without any opportunity to know the drivers and thus, creates no possibility of a discriminatory animus. *Id.* Indeed, the Court stated "[s]uppose, for example, that a traffic officer is stationed on a busy highway where people often drive above the speed limit, and there is no basis upon which to distinguish them." *Id.* (emphasis added). The Court explicitly stated that "[o]f course, an allegation that speeding tickets are given out on the basis of race or sex would state an equal protection claim, because such discriminatory classifications implicate basic equal protection concerns." *Id.* at 604. Unfortunately, the lower courts ignored the important distinction this Court made in crafting that example and impermissibly expanded the discussion in dicta of discretion to any act of government actors that can be deemed discretionary. This Court itself has acknowledged that "[d]ictum settles nothing, even in the court that utters it." *Jama v. Immigration & Customs Enf't*, 543 U.S. 335, 351 n.12 (2005). Additionally, the federal courts understand this distinction whereas "legal conclusions about hypothetical facts are dicta." *United States v. Files*, 63 F.4th 920, 929 n.6 (11th Cir. 2023); *Edwards v. Prime Inc.*, 602 F.3d 1276, 1298 (11th Cir. 2010); *United States v. Caraballo-Martinez*, 866 F.3d 1233, 1244 (11th Cir. 2017).

Despite the *Engquist* Court's clear limitation to the citizen employee, the Eighth Circuit has taken the example of an officer blindly giving out tickets to create a new precedent that applies the limited

exception to the class-of-one theory of equal protection to police under the rationale that all police decisions are inherently discretionary. App.5; *Flowers v. City of Minneapolis*, 558 F.3d 794 (8th Cir. 2009). In *Flowers v. City of Minneapolis*, 558 F.3d 794, 798-800 (8th Cir. 2009), the Eighth Circuit ignored the precedent set forth in *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000), and expanded the expressly limited holding in *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591 (2008), to the discretionary acts of the police. The Eighth Circuit then applied the erroneous standard created in *Flowers v. City of Minneapolis*, 558 F.3d 794, 798-800 (8th Cir. 2009), to Mr. Pratt's case. The holding in *Flowers* impermissibly extrapolated on this Court's dicta in *Engquist* to impermissibly overrule *Olech*. This precedent established by the Eighth Circuit is directly at odds with the holding of the Seventh Circuit which held that the *Engquist* decision does not extend to law enforcement discretion. *Hanes v. Zurick*, 578 F.3d 491 (7th Cir. 2009).

Outside of the area of police discretion, the circuit courts are in further disarray. The First Circuit has agreed "with those federal courts that have found the case applicable beyond government staffing" and has extended its holding to include the casino licensing decisions of the state. *Caesars Mass. Mgmt. Co., LLC v. Crosby*, 778 F.3d 327, 336 (1st Cir. 2015). The Eleventh Circuit has extended the exception to public contract bidding. *Douglas Asphalt Co. v. Qore, Inc.*, 541 F.3d 1269 (11th Cir. 2008). The Tenth Circuit found that the reasoning in *Engquist* was applicable to government contractors. *Utah v. Herbert*, 828 F.3d 1245, 1255 (10th Cir. 2016). The

Seventh Circuit has expanded the holding to prosecutorial discretion as well as parole decisions. *United States v. Moore*, 543 F.3d 891 (7th Cir. 2008); *Adams v. Meloy*, 287 Fed.Appx. 531 (7th Cir. 2008). The Second Circuit refused to extend the holding in *Engquist* to a regulatory agency's license revocation and suspension decisions but noted that it believed *Engquist* could be applied outside the government employment context in other situations. *Analytical Diagnostic Labs, Inc. v. Kusel*, 626 F.3d 135, 141-42 (2d Cir. 2010)(discussing the circuit split). In a nonbinding decision, the Sixth Circuit held that *Engquist* likely was limited to the public employment context and probably did not control in a class-of-one claim in a denial of parole case. *Franks v. Rubitschun*, 312 Fed. Appx. 764, 766 n.3 (6th Cir. 2009). However, other courts in that circuit have refused to follow that non-binding precedent and have held that the *Enquist* decision is not limited to the public employment context and is indeed applicable to any discretionary governmental action. *Argue v. Burnett*, No. 1:08-cv-186, 2010 U.S. Dist. LEXIS 31817, at *37 (W.D. Mich. Apr. 1, 2010).

This impermissible expansion of *Engquist* is diluting the basic tenet of the Equal Protection Clause. "[T]he Equal Protection Clause represented a 'foundation[al] principle'—'the absolute equality of all citizens of the United States politically and civilly before their own laws.'" *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 143 S. Ct. 2141, 2159 (2023)(citing Cong. Globe, 39th Cong., 1st Sess., 431 (1866) (statement of Rep. Bingham) (Cong. Globe)). "[T]he Amendment would

give 'to the humblest, the poorest, the most despised of the race the same rights and the same protection before the law as it gives to the most powerful, the most wealthy, or the most haughty... For '[w]ithout this principle of equal justice,' …there is no republican government and none that is really worth maintaining.'" *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 143 S. Ct. 2141, 2159 (2023)(citations omitted). "The equal protection clause . . . protects the individual from state action which selects him out for discriminatory treatment…" *Allegheny Pittsburgh Coal Co. v. Cty. Com.*, 488 U.S. 336, 345 (1989)(citation omitted). This Court has explained "the purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination…." *Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)(citing *Sioux City Bridge Co. v. Dakota Cty.*, 260 U.S. 441, 445 (1923)). Indeed, this Court has held "[s]tate action, as that phrase is understood for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms." *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948). "And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of this Court to enforce the constitutional commands." *Id.* at 20.

The danger of the Eighth Circuit's holding warrants this Honorable Court's immediate attention. Of course, courts are concerned with opening up frivolous litigation over discretionary acts. Mr. Pratt's case is not a case of discretion. This case involves purposeful malfeasance. The testimony of Officer

Stone is akin to a whistleblower coming forward. Officer Stone was assigned to this case and detailed that this was an intentional cover up. Mr. Pratt did not sue the Camden County Sheriff's Department for failure to investigate. Mr. Pratt only brought suit after Officer Stone detailed the Sheriff's Department's malfeasance. The expansion of the *Engquist* holding to the purportedly "discretionary" acts of the police places the average citizen in grave danger. This Honorable Court was clear in *Engquist* that its holding was never meant to abrogate the rights of a citizen like Mr. Pratt. The purpose of 42 U.S.C. §1983 was deterrence of constitutional violations. *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986); *Hardin v. Straub*, 490 U.S. 536, 539 (1989). Giving any discretionary act of the government blanket protection from liability would run afoul of the very purpose of the statute. States will likely never rid themselves of bad actors who are using their authority to protect a politically connected class. Without the impetus of financial punishment from the people they injure, there would be no reason to root out corruption. While in theory bad actors should be fired based solely on the good and moral character of those who employ them, the founders of this country did not believe in such naïveté and understood that this country must be zealously cautious of government overreach and provide a system of checks on the system by the people it represents.

In rendering its decision, the Eighth Circuit is essentially condoning the creation of an untouchable class of citizens – the politically connected – to the detriment of the citizens at large. "[E]qual protection

of the laws is not achieved through indiscriminate imposition of inequalities." *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 143 S. Ct. 2141, 2169 (2023)(citing *Shelley*, 334 U.S. 1, 22 (1948)). These new "discretionary" exceptions that keep being expanded by the circuit courts are effectively diluting the breadth of the Equal Protection Clause. In essence, every government function is imbued with some form of discretion. If government actors could deny citizens equal protection under the laws by simply claiming discretion allows for it, then even the most egregious instances of violations would absolve the government actor of any liability. Mr. Pratt's case is the perfect example. The Eighth Circuit has deemed that factual allegations detailing a police coverup of a crime to protect a political class from any civil or criminal liability can simply never be deemed an equal protection violation because the law gives the police this type of unfettered discretion. "[I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 143 S. Ct. 2141, 2175 (2023)(citing *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896)(Harlan, J., dissenting)). The Eighth Circuit's decision clearly establishes a caste system. The police are supposed to protect <u>all</u> citizens, and cannot treat a class of citizens differently because they are the victims of the politically connected. When this understanding is upturned, you devolve into a third world country where political parties are toppled

with force every few years. This does not happen all at once. Seemingly small decisions to protect the coffers of the state are the chinks in the armor that destroy a strong republic. This Court long understood the importance of financial deterrence for bad acts. Indeed, it was the very purpose for the creation of liability under 42 U.S.C. §1983. Without real financial consequences, there is no impetus to ensure that corruption is rooted out.

The Eighth Circuit's creation of an exception to the rule for the discretionary acts of police is simply an end-run around blatant constitutional violations. Any constitutional violation as long as it is couched as "discretionary" despite clear evidence of willful violations, would eviscerate the long-held concerns of this country. Police could allow gangs to run the streets without fear of any "discretionary" investigation. Groups akin to the Ku Klux Klan could operate with impunity so long as they had a connection in the police force. The Eighth Circuit's precedent would permit the victims of these crimes to go without any redress even when the police cover up the illicit crimes of the politically connected. "[W]hat cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows…" *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 143 S. Ct. 2141, 2176 (2023)(citing *Cummings v. Missouri*, 71 U.S. 277, 4 Wall. 277, 325, 18 L. Ed. 356 (1867)). The Eighth Circuit's attempt to protect municipalities from lawsuits impermissibly forgets the basic tenet of this republic – to protect its people from an oppressive government.

The federal appellate courts have corrupted the limited holding in *Engquist* and have given corrupt police officers and departments the ability to engage in unconstitutional actions. The distortion of *Engquist* will now allow unconstitutional actions to go unchecked. This is a great danger to the American public. The distortion of the *Engquist* holding must be righted by our nation's highest court.

CONCLUSION

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

Respectfully submitted,

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