No. 24-527

# In the Supreme Court of the United States

EMORY D. CHRISTIAN,

*Petitioner,*

v.

RANCHO GRANDE MANUFACTURED HOME COMMUNITY, L.P., ET. AL.,

*Respondents.*

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

## PETITION FOR A WRIT OF CERTIORARI

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November 1, 2024
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## QUESTIONS PRESENTED

*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Comcast v. National Association of African American-Owned Media,* 139 S. Ct. 2693 (2019) operate to provide lower district courts with unconstrained discretion to:

"Throw the baby out with the bathwater," *i.e.,* dismiss meritorious civil rights complaints at the Fed. R. Civ. P. 12(b)(6) stage under the pretext that a complaint fails to plead sufficient facts giving rise to the inference of "but for" causation, pursuant to *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Comcast v. National Association of African American-Owned Media*, 139 S. Ct. 2693 (2019), when subject dismissal is, in fact, based upon lower district courts' flawed orders evidencing infidelity to the Constitution, Congressional intent and this Court's procedural and substantive rule of law which are destructive to American democracy and societal order. The questions presented are:

1. Whether a lower court of appeals sanctioned a lower district court's decision that departed so far from the accepted and usual course of judicial proceedings, . . . that it calls for the Supreme Court to invoke its supervisory power;

2. Upon the allegation that members of a 42 U.S.C.S. § 1985(3) civil conspiracy, engaged in joint actions to deprive an individual of her fundamental constitutional freedoms, on the basis of race, whether *Comcast v. National Association of African American-Owned Media,* 139 S. Ct. 2693 (2020) provides a sufficiently detailed, process-oriented, method of analysis

requiring lower courts to consider the totality of the well-pleaded facts giving rise to the plausible inference that said conspiracy, not whether each individual defendant, was motivated by racial animus, to deprive the Plaintiff of her federally-protected constitutional rights.

## PARTIES TO THE PROCEEDINGS

Petitioner EMORY D. CHRISTIAN is the Plaintiff in the United States District Court for the Northern District of California and the Appellant in the United States Court of Appeals for the Ninth Circuit.

Respondents are RANCHO GRANDE MANUFACTURED HOME COMMUNITY, L.P.; SUSAN ROBERTS, BURT HAMERNICK, an employee of Rancho Grande Manufactured Home Community; LISA HAMERNICK, an employee of Rancho Grande Manufactured Home Community; BART HOTCHKISS, an employee of the California Department of Housing and Community Development at the relevant time; and STACY STEPHENSON, an employee of the California Department of Housing and Community Development at the relevant time. Respondents were Defendants in the United States District Court for the Northern District of California and the Appellees in the United States Court of Appeals for the Ninth Circuit.

## LIST OF PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit

No. 22-16821

Emory D. Christian, *Plaintiff-Appellant,* v. Rancho Grande Manufactured Home Community, a limited partnership; Susan Roberts; Burt Hamernick; Lisa Hamernick; Bart Hotchkiss; Stacy Stephenson, *Defendants-Appellees.*

Date of Final Opinion: July 11, 2024

Date of Rehearing Denial: August 5, 2024

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U.S. District Court Northern District of California

No. 21-cv-07040-VC

Emory D. Christian, *Plaintiff,* v. Rancho Grande Manufactured Home Community, et al., *Defendants.*

Date of Final Order: November 22, 2022

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## PETITION FOR A WRIT OF CERTIORARI

Emory D. Christian respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Federal Circuit in this case.

## OPINIONS BELOW

The Memorandum Opinion of the Ninth Circuit, included in the Appendix ("App.") at 1a, affirmed the U.S. District Court for the Northern District of California's dismissal (App.10a) of Petitioner's five federal claims for failure to state claim on which relief could be granted pursuant to Fed. R. Civ. P. 12(b)(6) without leave to amend and is reported at 2024 U.S. App. LEXIS 16982, which followed the district court's order granting Respondents' motions to dismiss Petitioner/Plaintiff's Third Amended Complaint (App.10a).

## JURISDICTION

The Ninth Circuit issued its memorandum and directed entry of judgment in the Petitioner's case on July 11, 2024. (App.1a). The Ninth Circuit denied the Petitioner's Request for Rehearing on August 5, 2024. (App.23a). This Court has jurisdiction under 28 U.S.C. § 1254(1); U.S. Const. Amend. IV, U.S. Const. Amend XIV § 2.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**U.S. Const. amend. IV**

The Fourth Amendment to the U.S. Constitution, in relevant part provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable . . . seizures, shall not be violated . . .

**U.S. Const. amend. XIV, § 1**

The Fourteenth Amendment § 1 to the U.S. Constitution, in relevant part provides:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law.

**U.S. Const. amend. XIV, § 2**

The Fourteenth Amendment § 2 to the U.S. Constitution, in relevant part provides:

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

**42 U.S.C.S. § 1981**

42 U.S.C.S. § 1981 which is derived from § 1 of the 1866 Civil Rights Act provides in pertinent part:

> **(a) Statement of equal rights**
>
> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
>
> **(b) "Make and enforce contracts" defined**
>
> For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
>
> **(c) Protection against impairment**
>
> The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

**42 U.S.C.S. § 1982**

42 U.S.C.S. § 1982, entitled "Property Rights of Citizens," provides in pertinent part:

> All citizens of the United States shall have the same right, in every State . . . as is enjoyed by white citizens thereof to . . . purchase, lease, sell, hold, . . . real and personal property.

**42 U.S.C.S. § 1983**

42 U.S.C.S. § 1983 entitled "Civil Action for Deprivation of Rights," provides in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . 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.S. § 1985(3)**

42 U.S.C.S. § 1985(3) entitled, "Depriving Persons of Rights or Privileges," provides in pertinent part:

> If two or more persons in any State . . . conspire . . on the premises of another, for the purpose of depriving, either directly or indirectly, any person . . . of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State . . . the equal protection of the laws; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

## INTRODUCTION

The heightened pleading standard, established by *Bell Atlantic, Corp. v. Twombly,* 550 U.S. 544 (2007), ("Twombly") was expounded upon in *Ashcroft v. Iqbal,* 556 U.S. 662 (2009) (*"Iqbal"*) and *Comcast v. National Association of African American-Owned Media,* 139 S. Ct. 2693 (2019) (*"Comcast"*). However these cases did not analyze "but for" causation in the context of a 42 U.S.C.S. § 1985(3) conspiracy. This Court should undertake to fill this void by issuing a writ in Petitioner, Emory D. Christian's (Petitioner's) case because, *inter alia,* as Justice Gorsuch writing for the 7-2 majority in *Bostock v. Clayton County,* 590 U.S. 644 (2020), acknowledged, "Often events have multiple 'but for' causes."

Petitioner's complaint alleges that the Respondents' joint actions gave rise to the formation of a 42 U.S.C.S. § 1985(3) conspiracy which rendered her powerless to fend off their repeated seizures of her leased property. So determined was the conspiracy to take the Petitioner's leased property (and allow her adjacent neighbor possession of it, while Petitioner paid the rent for it), that the conspiracy recruited state code enforcers, to whom they passed the baton. Although these Respondents/state code enforcement officers' singular job was to issue citations, each joined the conspiracy and engaged in joint actions with the other Respondents and, *inter alia,* illegally authorized and actually assisted their co-conspirators seize the Petitioner's property a final time by illicitly moving a permanent corner lot marker to permanently decrease the size of the Petitioner's lot and increase

the adjacent neighbor's lot, in what the Respondent code-enforcer termed a "compromise."

*Twombly, Iqbal* and *Comcast* did not contemplate a 42 U.S.C.S. § 1985(3) civil conspiracy, to *inter alia*, deprive a person of her fundamental constitutional rights, *i.e.*, deprivation of her property without due process, on the basis of her race and therefore these cases do not include the necessary processes and analytical frameworks to assist lower courts to identify multiple "but for" causations arising from allegations that a group of persons engaged in multitudinous, Constitutional-injury-producing-joint-actions, as is alleged to have occurred in the Petitioner's case.

This Court and its lower courts' first and foremost duty is to identify and protect fundamental rights by reasoned judgment; however, this Court, alone, possesses the solitudinarian authority to provide critical guidance to empower its lower courts to, in the context of the Petitioner's case, *inter alia*, ensure that its lower courts afford even the lowliest civil rights' litigant, like the Petitioner, and those like her, with equitable access to the federal courts.

Issuance of a writ, in this case, provides this Court with the opportunity to revisit and reaffirm the well-settled rule of law articulated in its landmark decision, *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968) (hereinafter referred to as "*Jones*"), which held that [t]he plain language of § 1982 bars all racial discrimination by private owners and public authorities in the sale or rental of property and granted to all citizens the same rights to purchase and lease property as enjoyed by white citizen.

*Jones* and the other executive[1] and congressional branches' anti-housing discrimination measures, so effectively eradicated racial-acquisition housing discrimination that groups, operating as conspiracies intent upon engaging in unlawful housing discrimination, are now often forced to strike after a protected class member acquires property, as is alleged in the Petitioner's case.

This Court's issuance of a writ of certiorari, will require it to prefatorily[2] undertake the discomfiting task of considering Petitioner's legal arguments that this Court's lower courts grossly deviated from the accepted and usual course of judicial proceedings before it can arrive at this case's primary issue: Whether *Iqbal* and *Comcast* include the necessary processes and analytical frameworks to assist lower courts ascertain but for causation where a 42 U.S.C.S. § 1985(3) civil conspiracy, to *inter alia*, deprive a person of her fundamental constitutional rights is alleged.

Even this Court's most cursory of reading the lower courts' orders and memorandum, attached in the appendix, will alert this Court to the lower courts' unjustified hostile tone and gross irregularities, the most fatal of which was their dismissal of the Petitioner's complaint, without leave to amend, unac-

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[1] The United States Congress enacted and President Lyndon Johnson signed the "Fair Housing Act," on April 11, 1968, (after the Rev. Dr. Martin Luther King was assassinated on April 4, 1968), on June 17, 1968),

[2] A challenge, the lower court of appeals erroneously declined to accept, despite not being clothed in discretionary jurisdiction, as is this Court.

companied by a finding that Petitioner's complaint was frivolous, futile, vexatious, etc. In place of a well-reasoned justification for such a draconian action, the lower district court merely opined: "There is no reason to think that Christian would be able to allege the necessary facts in a fourth amended complaint . . . (but without prejudice to pursuing the state law claims in state court)."

This Court will find that the lower district court clearly did not adhere to the applicable standard, enunciated by this Court in *Foman v. Davis*, 371 U.S. 178 (1962). The lower district court's error was compounded when the lower court of appeals let the lower district court slide. This violation of the rule of law and many more like it should result should result in this Court invoking its supervisory power pursuant to an issuance of a writ in this case.

This Court's imposition of the *Twombly* heightened pleading standard operates to provision its lower courts with an ever-under-development paradigm, misused by the lower district court in Petitioner's case, to unjustly dismiss cases, at the 12(b)(6) stage and yields this unconstitutional by product.

Due to many factors, most significantly the "Justice Gap[3]," lower courts' actions are immune from any of the checks and balances contemplated by our Founding Fathers.[4] This development has

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[3] Due to the "justice gap" that exists in America and discussed below most victims of housing discrimination cannot receive legal assistance at any level and certainly can't file a federal court of appeals action.

[4] The Judiciary Act of 1789, was signed into law by President George Washington and created the federal court system, including

untenably skewed the balance of power between the three levels of the federal judiciary with the tail, *i.e.*, the district courts, wagging the dog[5], *i.e.,* the lower appeals court and this Court, too, at cost of Americans being deprived of their fundamental Constitutional freedoms. Petitioner respectfully requests that this Court take into consideration this basic economic truth: There is no such thing as a free lunch[6] and take action to prevent victims of race discrimination from paying for reduced docket numbers with their stolen Constitutional freedoms.

A secondary unintended by product of the impact of *Twombly, Iqbal* and *Comcast*, is that once this Court, is informed (as the Petitioner does now), that a lower district court has gone astray of the Constitution, Congressional intent and acted in defiance of the rule of law enunciated by this Court, this Court is compelled to act.

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this Court, the Supreme Court, circuit courts and district courts. In 1891 Congress created s separate tier of appellate circuit courts, eliminating the necessity of Supreme Court justices traveling to her cases in different circuits. https://www.uscourts.gov/about-federal-courts/educational-resources/annual-observances/anniversary-federal-court-system

5 "The tail is wagging the dog" A small or unimportant part of something is becoming too important and is controlling the whole thing. Collins the free online dictionary. Accessed on October 20, 2024 https://www.collinsdictionary.com/us/dictionary/english/the-tail-is-wagging-the-dog

6 "There is no such thing a free lunch:" A popular adage communicating the ideas that it is impossible to get something for nothing. Wikipedia. Wikimedia Foundation, referenced October 18, 2024, https://en.wikipedia.org/wiki/No_such_thing_as_a_free_lunch

The Petitioner contends that her complaint was unjustly dismissed, without leave to amend by a lower district court, under highly irregular circumstances and erroneously affirmed by a lower court of appeals because *Iqbal*, and *Comcast* lack adequate guardrails, *i.e.*, processes and analytical frameworks, to ensure that lower courts' adequately attribute but for causation to a group's joint actions (resulting in the formation of an unlawful conspiracy) which deprive an individual of constitutional freedoms, on the basis of race. To address these deficiencies, the Petitioner respectfully requests that this Court issue a writ of certiorari.

**Factual Background**

On September 10, 2022, Petitioner, a black, elderly homeowner/lot lessee, filed suit against six defendants, (now Respondents), Rancho Grande Manufactured Home Community, (Rancho Grande), Rancho Grande's onsite managers, Burt Hamernick ("B. Hamernick") and Lisa Hamernick, Susan Roberts, ("Roberts") and two state of California code enforcement officers, Bart Hotchkiss,("B. Hamernick") and Stacy Stephenson, alleging that they formed a 42 U.S.C.S. § 1985(3) conspiracy, engaged in joint actions and discriminated against Petitioner on the basis of her race in violation, *inter alia*, of the Civil Rights Act.

Rancho Grande approved Petitioner's application to lease a lot, (upon which a manufactured home she purchased was situated) unaware that Petitioner was Black until she met with its onsite managers to sign the proffered lease. Thereafter, Respondents, B. Hamernick and Petitioner's adjacent neighbor, Roberts, conspired and formed a 42 U.S.C.S. § 1985 conspiracy, pursuant to which, they engaged in joint actions to subject the Petitioner to a hostile housing environment,

on the basis of race. The conspiracy's most consequential acts resulted from their successful, joint actions whereby they seized and maintained possession of a substantial portion of the Petitioner's leased lot, in violation of the Fourth, Thirteenth and Fourteenth Amendments codified as 42 U.S.C.S. §§ 1981, 1982 and 1983.

The state-actor Respondents later joined B. Hamernick and Roberts' conspiracy and placed their official, State of California, imprimatur and approval on B. Hamernick and Roberts' previous seizures by illegally modifying the boundaries by moving a permanent corner lot marker, in violation of California state law.

More than thirty days after the Petitioner conversed with Rancho Grande's onsite manager informing him that she was aware that he was working jointly with her adjacent neighbor to seize her property and to harass and intimidate her, the onsite manager, "memorialized" said conversation by writing and sending an email, ostensibly to the Petitioner, but which the onsite manager really intended to be read by his superiors and in which, as the complaint alleges, he, in fact, forwarded to his superiors. The purpose of the onsite manager's email was to covertly document and report up that Petitioner was a black female by including his false allegation that Petitioner had stated to him that she, (Petitioner) was [somehow] associated with BLM (Black Lives Matter).

The above-referenced facts (and many more not listed due to space constraints), give rise to the plausible inference that the Respondents formed a group, which satisfied the definition of a 42 U.S.C.S. § 1985(3) civil conspiracy, to *inter alia*, deprive the Petitioner of her fundamental constitutional rights,

*i.e.*, deprivation of her property without due process, on the basis of her race, in violation of the Fourth Amendment, codified as 42 U.S.C.S. §§ 1981, 1982, 1983; and her equal right to contract, in violation of the Fourteenth Amendment, codified as U.S.C.S. § 1981, on the basis of her race.

**Procedural Background**

On September 10, 2021, Petitioner filed her complaint in the lower district court.

On January 24, 2022, Petitioner filed her second amended complaint by stipulation.

On June 21, 2022, the lower district court dismissed the Petitioner's second amended complaint, stating:

> "The Court is skeptical that Christian will be able to allege any claims under federal law in an amended complaint . . . ," (App.22a)

The lower district court eerily and accurately predicted that it would dismiss the Petitioner's complaint, without leave to amend.

On November 22, 2022, the lower district court dismissed the Petitioner's third amended complaint, without leave to amend stating:

> "And the latest complaint is long and highly detailed, indicating that all relevant facts are already included. There is no reason to think that Christian would be able to allege the necessary facts in a fourth amended complaint, and dismissal is therefore without leave to amend (but without prejudice to pursuing the state law claims in state court.)" App.16a

On December 8, 2023, for ten minutes allocated between four attorneys, the lower court heard oral argument.

On July 11, 2024, the lower court of appeal issued its memorandum, affirming the lower district court's dismissal of Petitioner's third amended complaint. App.1a.

On August 5, 2024, the lower court of appeal issued its order denying Petitioner's petition for rehearing. App.23a

On September 30, 2024, after the Respondent Rancho Grande, *et al.*'s erroneously filed its motion seeking to have the lower court of appeals order the Petitioner to pay claimed attorneys' fees under 42 U.S.C.S. § 1988, the lower court of appeals denied Respondents' motion and noted:

> "The original motion for attorneys' fees was superseded by the corrected motion[7], is DENIED as moot." App.9a

**Procedural History**

Order Denying. as Moot, Attorneys' Fees, Federal Court of Appeals: United States Court of Appeals For the Ninth Circuit Case Number: D.C. No. 3:21-cv-07040-VC (August 5, 2024) Case Title: EMORY D. CHRISTIAN, Plaintiff-Appellant, v. RANCHO GRANDE MANUFACTURED HOME COMMUNITY, a limited partnership; SUSAN ROBERTS; BURT HAMERNICK, LISA HAMERNICK; BART HOTCH-

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[7] Respondent Rancho Grande, *et al.*'s Motion for attorneys' fees seeking $109,929.50 was pending in the lower district court at the time this Petition was drafted, however was denied.

KISS; STACY STEPHENSON, Defendants-Appellees (App.9a).

Order Denying Petition for Panel Rehearing, Federal Court of Appeals: United States Court of Appeals For the Ninth Circuit Case Number: D.C. No. 3:21-cv-07040-VC (August 5, 2024) Case Title: EMORY D. CHRISTIAN, Plaintiff-Appellant, v. RANCHO GRANDE MANUFACTURED HOME COMMUNITY, a limited partnership; SUSAN ROBERTS; BURT HAMERNICK, LISA HAMERNICK; BART HOTCHKISS; STACY STEPHENSON, Defendants-Appellees. (App.23a).

Memorandum Opinion, Federal Court of Appeals: Federal Court of Appeals: United States Court of Appeals For the Ninth Circuit Case Number: D.C. No. 3:21-cv-07040-VC (July 11, 2024) Case Title: EMORY D. CHRISTIAN, Plaintiff-Appellant, v. RANCHO GRANDE MANUFACTURED HOME COMMUNITY, a limited partnership; SUSAN ROBERTS; BURT HAMERNICK, LISA HAMERNICK; BART HOTCHKISS; STACY STEPHENSON, Defendants-Appellees. (App.1a).

ORDER GRANTING MOTIONS TO DISMISS THIRD AMENDED COMPLAINT, Date of Memorandum: Federal District Court: United States District Court, Northern District of California: Case Number: 21-cv-07040-VC: Case Title: Emory D. Christian, Plaintiff, v. Rancho Grande Manufactured Home Community, et al., Defendants (November 22, 2022). (App.10a).

ORDER GRANTING MOTIONS TO DISMISS SECOND AMENDED COMPLAINT, Date of Memorandum: Federal District Court: United States District

Court, Northern District of California: Case Number: 21-cv-07040-VC: Case Title: Emory D. Christian, Plaintiff, v. Rancho Grande Manufactured Home Community, et al., Defendants (June 21, 2022). (App.17a).

**Statutory Background**

Fed. R. Civ. P. 8(a)(2) provides in relevant part:

> (1) Claim for Relief. A pleading that states a claim for relief must contain: a short and plain statement on the grounds for the court's jurisdiction . . . a short and plain statement of the claim showing that the pleader is entitled to relief; and a demand for the relief sought, which may include relief in the alternative or different types of relief.

*Twombly*, 550 U.S. 544 (2007) overturned *Conley v. Gibson*,[8] 355 U.S. 41 (1957), and *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*,[9] 507 U.S. 163 (1992), holding that the federal court pleading standard is no longer "extreme permissibility," but is now a stricter "plausibility" standard which requires the plaintiff plead "enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of illegal agreement."

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[8] *Conley* held that a complaint need only state facts which make it "conceivable" that it could prove its legal claims and a court could only dismiss a claim if it appeared, beyond a doubt, that the plaintiff would be able to prove "no set of facts" in support of her claim that would entitle her to relief.

[9] *Leatherman* unanimously established that the heightened pleading standard was fundamentally at odds with the Federal Rules of Civil Procedure . . . and opined that the only way to change the standard would be to amend the Rules.

The rule of law is now that pleading must comply with Rule 8 under *Twombly*.

A lower court of appeals judge encouraged this Court to and this Court did provide its lower courts with greater guidance, although, pursuant to a five-four split in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *Iqbal* upheld *Twombly* and provided the lower courts with two working principals: First, "a court must accept as true all of the allegations contained in a complaint; and Second, only a complaint that states a plausible claim for relief survives a motion to dismiss.

This Court stated determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Iqbal* even more explicitly suggested that lower courts might start by combing through the complaint to cull out all of the facts and discard the conclusions and proceed from there.

## REASONS FOR GRANTING THE PETITION

### I. THE LOWER COURT OF APPEALS SANCTIONED A LOWER DISTRICT COURT'S DECISION THAT DEPARTED SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, . . . THAT IT CALLS FOR THE SUPREME COURT TO INVOKE ITS SUPERVISORY POWER.

Petitioner's case constitutes "A riddle, wrapped in a mystery inside an enigma.[10]" It will never be known why the lower district court gave such short shrift[11] to its putative analysis of Petitioner's complaint, as to have given it no meaningful legal analysis, at all. What should trouble this Court, however, is the lower district court's attributing the grounds upon which it dismissed the Petitioner's case to *Twombly, Iqbal* and *Comcast.*

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10 "A riddle, wrapped in a mystery inside an enigma." Library of Congress, A phrase Winston Churchill used in October 1939 after the signing of the Nazi-Soviet Pact at the beginning of World War II, suggesting that the Western World still does not understand the motivation behind many of the Soviet actions during the war. Referenced October 20, 2024 https://www.loc.gov/item/2016683579/#:~:text=The%20caption%20is%20a%20statement,actions%20during%20the%20Cold%20War.

11 Short shrift: Little or no attention or consideration, Earliest known use: William Shakespeare's play Richard III . . . Lord Hastings, condemned to be be-headed is told by Sir Richard Ratcliffe to "Make a short shrift" as the king "longs to see your head." Editors of the Merriam-Webster https://www.merriam-webster.com/grammar/short-shrift-or-short-shift#:~:text=Short%20shrift%20has%20a%20small,phrase%20make%20short%20shrift%20of

Not patently evident to this court, because Petitioner's complaint has not been made available to this Court, is the fact that the lower courts' orders and memorandum are riddled with phantom facts not found within the four corners of Petitioner's complaint.

At one time in America's history, community members regularly and viciously punished any Black person who dared move into an all-white housing community, with actual harm, as happened to Dr. Ossian Sweet[12] in Detroit, in 1925.

In the instant case, the Respondents' alleged conduct conforms to an archaic fact pattern prevalent at the turn of the last century wherein peculiar cartels, comprised of private and state actors, (and sometimes courts) engaged in joint actions to drive Black people from their newly-acquired homes located in non-black communities.

Petitioner contends that the lower courts' orders and memorandum, standing alone, will evidence that the lower courts:

1. Failed to adhere, yet claimed to adhere, to the underlying principles in *Twombly*;
2. Failed to analyze the Petitioner's complaint, yet claimed to have analyzed Petitioner's complaint pursuant to *Iqbal* and *Comcast* according to *Iqbal's* two prongs: nowhere in the orders, does the lower court identify more than a scintilla of the well-pleaded facts in

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12 Ossian Sweet".: Wikipedia, The Free Encyclopedia, Wikimedia Foundation, October 7, 2024, https://en.wikipedia.org/wiki/Ossian_Sweet.

Petitioner's complaint's pursuant to *Iqbal,* nor is there evidence that the lower court accepted the entirety of the well-pleaded facts as true; The lower court certainly did not consider Petitioner's well-pleaded facts in the light most favorable to the Petitioner, as required by *Twombly* and *Iqbal.*;

3. Did not declare a reason such as undue delay, bad faith, or dilatory motive on Petitioner's part, yet refused to permit the Petitioner the leave she sought to amend her complaint, even though this Court requires leave to amend be "freely given," and failure to do so without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules of Civil Procedure, consistent with this Court's rule of law, articulated in *Foman v. Davis* 371 U.S. 178 (1962).

Most compellingly, even if the lower courts' had applied *Iqbal* and *Comcast* to the facts of Petitioner's case, these cases do not provide sufficient guidance in the form of processes and analytical frameworks, to enable a lower court to ascertain whether multiple "but for" causations, could be plausibly inferred from the totality of the circumstances.

Petitioner brought the lower district court's errors to the attention of a lower court of appeals attention, however, the lower court of appeals' memorandum reflects that it turned a blind eye and affirmed the lower district court's dismissal, even as it bore questions on its lips . . . Questions which could have been

answered during a requested rehearing, however the lower court of appeal denied this request, too.

The above-identified deficits call for this Court to invoke its supervisory power by issuing a writ of certiorari.

## II. THE PETITIONER'S COMPLAINT RAISES THIS IMPORTANT QUESTION: WHAT MEASURES SHOULD THIS COURT TAKE UPON CONSIDERATION OF THE *TWOMBLY* HEIGHTENED PLEADING STANDARD'S IMPACT ON UNCONSTITUTIONAL POST-ACQUISITION HOUSING DISCRIMINATION, ON THE BASIS OF RACE.

The chain of events giving rise to the Petitioner's case is, according to many statistical indexes, replicated tens of thousands of times or more each year.[13] [M]ost incidents of housing discrimination go undetected and unreported.[14]

At the heart of the Petitioner's complaint is the fact that the Respondents' joint actions, over more than two years, rendered her powerless to fend off their repeated seizures of her leased property which reduced the Petitioner to perpetually living in fear and becoming severely debilitated due to illnesses brought on by the stress, as she attempted to maintain

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[13] In 2023, there were 34,150 complaints of housing discrimination across the country, which is a 3.5 increase from the previous year. California had the highest number of complaints, with 8,667. https://nationalfairhousing.org/resource/2023-fair-housing-trends-report/

[14] 2023 Fair Housing Trends Report National Fair Housing Alliance, nationalfairhousing.org, August 7, 2023

control and possession of her home, her property[15] and her well-being, while daily confronted by a small groups of private and state actors, (not far different from what the Ku Klux Klan must have been like), which subjected her, and only her, out of a community of 318 lessees, because she is black, to prolonged, invasive, cruel and repeated, dispossessions of her property, in violation of 42 U.S.C.S. § 1985(3)and 42 U.S.C.S. §§ 1981, 1982 and 1983, the ill-effects of which persist to this day.

Without this Court's intervention, tens of thousands of housing discrimination victims, not just the Petitioner, will continue to suffer the scourge of housing discrimination with little hope that justice can be achieved through our judiciary system and the rule of law.

This Court should issue a writ of certiorari to consider what measures are necessary to ensure that the Civil Rights Act of 1866 remains a "sweeping" and comprehensive statute forbidding all racial discrimination affecting the basic civil rights enumerated in the Act.

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[15] As Louis Jaffe noted as early as 1937, "property (of which contract and the right to contract, is an instance) equips the possessor with great powers of exclusion-enforced or sanctioned by the law . . . and this power to exclude is a source of regulating others' conduct.'" 87 Louis L. Jaffe, *Law Making by Private Groups*, 51 HARV. L. REV. 201, 217 (1937), reprinted in *American Legal Realism* 115, 118 (William W. Fisher, Morton J. Horwitz & Thomas A. Reed eds., 1993)

## III. THIS CASE PROVIDES THIS COURT AN OPPORTUNITY TO REAFFIRM ITS COMMITMENT, POST-*JONES V. ALFRED H. MAYER CO.*, 392 U.S. 409, TO THE PRINCIPLE THAT UNLAWFUL HOUSING DISCRIMINATION, A VESTIGE OF THE SLAVE SYSTEM, SHOULD BE ELIMINATED FROM AMERICAN LIFE.

Three generations have been born, since this Court issued its opinion in *Jones v. Alfred Mayer*, 392 U.S. 409 (1968) and many[16] consider the time ripe for *Jones* be reconciled with the heightened pleading standard established by *Twombly*, and reinforced in *Iqbal*, and *Comcast.*

This Court in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 438-444, proclaimed one of many of this Court's historical truths: The structure of human slavery was never fully uprooted in this country and that America's black citizens continue to be oppressed by the remaining existence of the badges and indicia of the supposedly outlawed system.[17] "Justice William O. Douglas, concurring in *Jones*, stated yet another profound truth; While the institution [of slavery] has been outlawed, it has remained in the minds and hearts of many white men." *Id.* at 447

Petitioner's after-acquisition housing discrimination complaint evokes the memory of animated

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[16] Darrell A. H. Miller, *White Cartels, the Civil Rights Act of 1866, and the History of Jones v. Alfred H. Mayer Co.*, 77 FORDHAM L. REV. 999 (2008). Available at: https://ir.lawnet.fordham.edu/flr/vol77/iss3/2

[17] Arthur Kinoy, *Jones v. Alfred H. Mayer Co.: An Historic Step Forward*, 22 VANDERBILT LAW REVIEW 475 (1969) https://scholarship.law.vanderbilt.edu/vlr/vol22/iss3/3

forces, which for hundreds of years, prior operated, and to this day, operate to deprive Black people and other protected class members of their fundamental constitutional rights. The war on protected class members' fundamental Constitutional freedoms has not abated and this Court's guidance is required, therefore it should issue a writ of certiorari.

## IV. ISSUES

**A. Whether a Lower Court of Appeals' Act Sanctioning a Lower District Court's Decision (That Departed So Far from the Accepted and Usual Course of Judicial Proceedings) Exposed *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Comcast v. National Association of African American-Owned Media's* 139 S. Ct. 2693 (2019) Failure to Provide Lower Courts With Sufficient Analytical Frameworks and Adequate Guidance Necessary to Equitably Adjudicate, at the Fed. R. Civ. P 12(b)(6) Motion to Dismiss Stage, a Plaintiff's Allegation That a 42 U.S.C.S. § 1985(3) Civil Conspiracy Deprived Her of Her Constitutional Rights. If So, the Supreme Court Must Invoke Its Supervisory Powers**

### 1. Whether a Lower Court of Appeals' Failure to Sanction a Lower District Court's Decision (That Departed So Far from the Accepted and Usual Course of Judicial Proceedings) Requires That the Supreme Court Must Invoke Its Supervisory Powers

The most efficient way of proving up the lower courts' radical departure from the accepted and usual course of judicial proceedings is for the Petitioner to direct this Court's attention a case wherein a lower district court judge got it exactly right. Upon comparison of this case to the lower courts' orders and memorandum (attached in the appendix) in the instant case gross deficiencies become obvious.

*Sines v. Kessler*, 324 F. Supp. 3d 765 (W.D. Va 2021) was filed after the 2016 Charlotteville Virginia riots and stands out as a textbook example of how a lower district court should ascertain a plausible inference of but for causation arising from factual allegations of a 42 U.S.C.S. § 1985(3) conspiracy' actions.

District court judge Norman K. Moon began his analysis in conformity with the recommendations in *Iqbal* and summarized the allegations, derived from a 112 page complaint, separating all of its allegations into two categories: Facts, which he accepted as true or conclusions, which he did not accept as true. Judge Moon, next, set out the elements necessary to establish a 1985(3) conspiracy and found that an inference of racial animus was plausibly inferred. Next, he determined that the alleged conspiracy deprived the plaintiff of equal enjoyment of rights secured by the law, sufficient to satisfy 1985(3) requirements. He then

considered the alleged actions of each of the ten defendants, annotating each allegation, cross-referencing each individual's action, to the corresponding allegation set forth in the complaint and concluded that each defendant (except for one) engaged in concerted action. Finally, Judge Moon considered whether the Plaintiffs' injuries resulted from overt acts committed in the furtherance of the conspiracy; and on the basis of the foregoing analysis determined that the plaintiffs . . . adequately alleged that the defendants, minus one, formed a 1985(3) conspiracy.

In Petitioner's case, neither the lower district court nor the lower court of appeals, upon *de novo* review summarized and identified all of the facts alleged in Petitioner's, admittedly lengthy complaint, even though *Iqbal* suggests that a court do so and *Bell Atlantic Corp.* U.S.at 555-556 (citing *Swierkiewicz v. Sorema N.A.* 534 U.S. 506, 508 *Neitzke v. Williams*, 490 U.S. 319, 327; *Scheuer v. Rhodes*, 416 U.S. 232, 236, ordains "When ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint") mandates that it do so.

The lower courts, in Petitioner's case, simply cherry-picked an alleged fact here and there then found it irrelevant or not weighty enough but mostly did not factor the all of the facts alleged in Petitioner's complaint into its purported analysis, despite claiming to rely on *Twombly, Iqbal* and *Comcast.*

Worse, the lower courts cited so-called "facts," (suggested to them by defense counsel) that were not derived from the Petitioner's complaint, at all.

Listed below is a small percentage of the irregular and inappropriate statement/conclusions, excerpted from the lower district court's two orders;

> "The complaint goes on to say that the defendants eventually performed the requested work[18] "as a result of this lawsuit being filed." While that is a fact, it does not help her plausibly allege race discrimination; it suggests only that the defendants wanted to make a costly lawsuit go away[19] . . . and . . . [T]here are not plausible allegations that . . . the state inspectors' actions were anything more than negligent[20]." App.11a.

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[18] Rancho Grande finally cut down the massive common nuisance, after her third amended complaint was filed, naming, two state actors as additional defendants

The state code enforcer, accepted Rancho Grande's word that it would to cut down the common nuisance (it didn't') in exchange for the inspector "ordering" Rancho Grande to seize of a portion of the Petitioner's leased lot as a "compromise." Rancho Grandes elimination of the common nuisance operated, not "to make an expensive case go away" but to possibly limit Rancho Grande's damage exposure and in attempt to absolve the state actors of liability due to their refusal and failure to enforce California state law.

[19] The only way the lawsuit could "go away" would have been by agreement by the parties or by the district court judge's premature, dismissal, without leave to amend, which is what the lower court district judge forecasted would happen on June 21, 2022. and which did occur on November 22, 2022.

[20] The lower district judge's characterization of the inspector's actions as negligent is usually a finding of fact for a jury to decide, not a legal question for a judge to settle at the motion to dismiss stage.

"To support her conspiracy claim, Christian alleges meetings between the various defendants . . . But opportunities to conspire[21] are not sufficient to state a claim for conspiracy, because the fact that two people met outside the presence of the plaintiff does not make a conspiracy plausible. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007) The allegations do not provide any more than that, other than the defendants each failed to do what the plaintiff wanted them to do or otherwise treated her poorly. For instance, Christian alleges that Hotchkiss, one of the inspectors, spent "more than an hour" with Burt Hamernick and Roberts and that her home security camera recorded him discussing the property line dispute[22] between Christian and Roberts but the only content of the discussion that Christian relates is that Hotchkiss suggested that Hamernick evict her. And Hamernick responded that he wished he could. That fact implies frustration or even personal animus, but it does not suggest a conspiracy against Christian on account of her race. Christian alleges even less against the second state inspector, Stephenson, who

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21 Petitioner's complaint did not allege "opportunities conspire," the complaint alleged the date, place, participants, and verbatim conversations by alleged co-conspirators.

22 Both the lower district court and the lower court of appeals mischaracterized Petitioner's complaint as "a property line dispute between neighbors," and totally ignored and absolved the other named defendants of any role in their repeated seizures of the Petitioner's leased lot.

was dispatched at her request and then attempted to implement a "compromise" over the boundary dispute." App.13a-14a

The lower court of appeal's memorandum, which affirmed the lower district court, dated July 11, 2024, largely constitutes a restatement of the lower district court's flawed rationale and it, as well, incorporated phantom facts and raised questions, which could have been resolved at a rehearing. Had the court allowed Petitioner to resolve its questions, the lower court of appeals could well have concluded that Petitioner sufficiently pleaded fact that B. Hamernick's action (sending his BLM email to Petitioner and his superiors) operated to raise the plausible inference that the Rancho Grande onsite manager was motivated to discriminate against Petitioner on the basis of his racial animus. Questionable statements excerpted from the lower court of appeals memorandum dated July 11, 2024, include:

1. "... [t]he only joint action with the inspectors relates to the adjustment of the lot marker, and Christian's complaint fails to allege sufficient facts to establish (it should read raise the plausible inference) that this amounted to a deprivation of property.[23] App.7a

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23 Petitioner's complaint alleged multiple instances where the two, state, code enforcement officers engaged in many joint actions with Rancho Grande's onsite manager to harass, intimidate, and deprive the Petitioner of her property, pursuant to this Court's case, as noted in the lower district court's November 22, 2022, order stated, "Christian alleges meetings between various defendants;" App.13a; "Hotchkiss suggested

2. Christian needed to allege facts supporting a plausible, non-speculative inference that this disputed four-inch section was indeed part of her lot.[24]

3. "Emory Christian brought this civil rights action alleging that several defendants subjected her to various forms of discriminatory treatment arising out of a dispute she had with one of her neighbors in the Rancho Grande Manufactured Home Community in Rohnert Park, California."[25]

4. Christian alleges that Roberts allowed vegetation on her lot to overgrow onto

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that B. Hamernick evict her, and Hamernick responded that he wished he could." App.14A

[24] Petitioner's complaint included the fact that Rancho Grande hired retired code enforcement officer, Jack Kerin, to verify that permanent corner lot markers between Christian and Roberts lots were in their legally correct location and he issued a report that the markers were correct as marked, and they were until the Respondents illegally moved one.

[25] Contrary to the lower court of appeals erroneous assertion, Christian's complaint alleged that each of the named defendants engaged in joint actions and formed a 1985(3) conspiracy; Also contrary to the lower court of appeals' erroneous conclusion that Christian's complaint arose out of a dispute, Christian's complaint arose because members of the alleged conspiracy, engaged in joint actions to repeatedly seize a substantial portion of the leased lot upon which her purchased home was situated, in violation of the Fourth Amendment which prohibits deprivation of property without due process. *See, Soldal v. Cook County*, 506 U.S. 56 (1992).

Christian's lot . . . until it was finally removed . . . after this lawsuit was filed.[26]

5. "Christian relies primarily on an email that Burt Hamernick allegedly sent to her on August 4, 2021, in which he recounted a conversation between the two of them . . . Christian does not dispute that she complained about racial discrimination . . . she specifically denies that she ever mentioned "BLM, (Black Lives Matters). She contends that this false statement was included in the email by Burt Hamernick to "silently signal [to] his higher-ups" that Christian "was not only an African-American woman but a highly undesirable African-American woman, given her sympathies to BLM. But as the district court recognized, this inference is implausible given that the complaint alleges that the email was sent only to Christian herself and not to Hamernick's superiors in RGMHC."[27]

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[26] Contrary to lower court of appeals erroneous factual statement, Christian did not allege that Roberts allowed vegetation to overgrow, Christian's complaint actually alleged that the neighbor and/or unknown individuals, and/or RGMHC planted and facilitated the growth of large deciduous trees in violation of Cal. Civil Code § 798.35..5 and said trees constituted a illegal common nuisance and RGMHC and its onsite manager had the legal obligation to eradicate and which RGMHC eradicated after the lawsuit was filed.

[27] Contrary to lower court of appeals erroneous factual statement the "Burt Hamernick recounted a conversation between the two of them," Petitioner alleged that Burt Hamernick did not send this email to "recount a conversation," nor did Christian complain about "racial discrimination, (Christian actually

6. "The complaint alleges that Hotchkiss and Stephenson deprived Christian of "her federal rights of substantive due process and equal protection by facilitating the other Defendants' seizure of a substantial part of Christian's lot." . . . in violation of the Equal Protection Clause . . . and Fourth Amendment."[28]

7. "To establish that this Stephenson and B. Hamernick's movement of the permanent corner lot marker] amounted to a seizure, rather than a correct resolution of the boundary dispute, Christian needed to allege facts supporting a plausible, non-speculative

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complained that her adjacent neighbor has seized a substantial portion of her leased lot and Christian alleged that the onsite manager he sent his email Christian AND to his superiors to make them aware that Petitioner was a black female and Petitioner's complaint did not allege that the Burt Hamernick's "BLM" email was sent only to Christian herself; The complaint alleges that Burt Hamernick, himself, told the Petitioner that he sent "everything" [including the BLM email] to his superiors.

28 Christian actually alleged RGMHC's onsite manager summoned inspector Hotchkiss to secure Hotchkiss' agreement not to enforce California state law which required removal of the common nuisance, (much like Cook County did not intercede with the landlord engineered an unlawful eviction in *Soldal v. Cook County*); that code enforcement officer Stepheson, refused to enforce California state law which required eradication of the common nuisance and actually engaged in joint action with the onsite manager whereby they seized the Petitioner's lot by illegally moving the permanent corner lot marker to decrease the size of the Petitioner's lot and increase the size of Respondent neighbor's lot.

inference that this disputed four-inch section was indeed part of her lot.[29]

8. "The complaint . . . alleges that no one knows to this day where the accurate lot is located."[30] App.6a

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[29] Petitioner's complaint included the fact that Rancho Grande hired retired code enforcement officer, Jack Kerin, to verify that permanent corner lot markers between Christian and Roberts lots were in their legally correct location and he issued a report that the markers were correct as marked, and they were until the Respondents state actor, Stephenson and B. Hamernick, illegally moved one on September 9, 2022.

[30] The complaint does not allege this fact. The referenced allegation was uttered by one of the Respondents, who was recorded decrying to her handyman that no one knows where to accurate lot was located because her alleged co-conspirators had stopped communicating with her.

2. **Whether *Comcast v. National Association of African American-Owned Media,* 139 S. Ct. 2693 (2019) Provides a Sufficient Process and Analytical Framework Enabling Lower Courts to Fairly Adjudicate a Fed. R. Civ. P 12(b)(6) Motion to Dismiss Wherein a Plaintiff Alleges That a Group Comprised of Private and State Actors Formed a 42 U.S.C.S. § 1985(3) Civil Conspiracy Whose Common Purpose Was to Intentionally Deprive a Plaintiff, on the Basis of Race, of Her Fundamental Constitutional Right to Property, Without Due Process, in Violation of the Fourth Amendment, Codified as 42 U.S.C.S. §§ 1981, 1982, 1983.**

America has an access-to-justice crisis.[31]

Petitioner's case may well be an unforeseen and unintended casualty of a crisis that has been brewing in the American federal judiciary for many years[32] judicial-resource scarcity, *i.e.*, too many cases and not enough judges.

This Court's resolve to remedy or at least mitigate the problem of judicial-resource scarcity was revealed in *Twombly*, 550 U.S. 544 (2007), reaffirmed in *Ashcroft*

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[31] Engstrom, David and Nora, *Justice for All? Why We Have an Access to Justice Gap in America-and What Can We Do About It?*, June 13, 2024. Stanford Law School. Law.stanford.edu

[32] Martha J. Dragich, *Once a Century Time for a Structural Overhaul of the Federal Courts*, University of Wisconsin Law School (1996) https://repository.law.wisc.edu/s/uwlaw/media/36022

*v. Iqbal*, 556 U.S. 662 (2009) and also acknowledged in Justice Stevens' *Twombly* dissent. This Court intended for *Twombly* and *Iqbal* to provide lower courts with the means to reduce the number of cases on their dockets.

If it is true that this Court's current heightened pleading standard is an amalgamation of the two *Twombly* legal principles, *Iqbal*'s two-prong test and Comcast's instruction that lower courts undertake "context-specific" scrutiny of the facts, then it is fair to describe that the Court's current heightened pleading standard is an ever-under-construction-as necessary paradigm which will continue to evolve, as this Court deems necessary depending upon its receipt of a case requiring re-examination of the procedures, pursuant to which a lower court should follow to justly ascertain "but for" causation.

If it is reasonable to suppose that the *Twombly* heightened standard of pleading will require this Court's periodic reevaluation to allow this Court to improve and make clearer the processes and analytic frameworks to ensure lower courts render decisions, consistent with Constitutional mandates then Petitioner's case would be an excellent choice to use to accomplish this objective and this Court should issue a writ.

This Court must provide the necessary processes and analytic frameworks to ensure that lower courts do not "Throw the baby out with the bathwater,"[33]

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[33] "Don't throw the baby out with the bathwater.: Wikipedia, The Free Encyclopedia, Wikimedia Foundation, October 7, 2024, https://en.wikipedia.org/wiki/Don%27t_throw_the_baby_out_with_

*i.e.*, dismiss meritorious complaints at the Fed. R. Civ. P. 12(b)(6)) under the pretext of a pleading deficiency but actually based upon lower courts' flawed orders evidencing infidelity to the Constitution, Congressional intent and this Court's procedural and substantive rule of law;

### 3. But-For Causation Standard Is Inherently Incompatible With Discrimination Cases; Therefore This Court Should Provide Additional Guidance to Its Lower Courts to Ensure That Constitutional Privileges are Protected, in the Course of Ascertaining But for Causation

This Court and certain of its Justices have acknowledged the incompatibility of the heightened but for causation standard with civil rights cases:

This Court in *Bray v. Alexandria*, 506 U. S. 263, (1993) explained that:

> "[d]iscriminatory animus implies more than intent as volition or intent as awareness of consequences. It implies that the decision-maker selected or reaffirmed a particular

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the_bathwater#:~:text=4%20External%20links-,History,baby%20out%20with%20waste%20water.

An idiom derived from a German proverb, *das Kind mit dem bade ausschutten*. Thomas Carlyle adapted the concept in a 1849 essay on slavery: "And if true, it is important for us, in reference to this negro question and some others. The Germans say, "you must empty-out the bathing-tub, but not the baby along with it" Fling out your dirty water with all zeal and set it careening down the kennels; but try if you can keep the little child!"

> course of action at least in part because of, not merely in spite of, its adverse effects upon an identifiable group."

Justice Sandra Day O'Connor recognized that the but-for test, at times, "demands the impossible" *Price Waterhouse v. Hopkins*, 490 U.S. 228, 264, (1989)

In 2013, Justice Ginsberg foreshadowed the development of problems, now encountered by the Petitioner in, In *University of Texas Southwestern Medical Center v. Nassar*, 570 U. S. 338 (2013) when she concurred in part and concurred in the judgment acknowledged that a but-for causation standard applied, however she referred to her previous dissent in which she explained that a strict but-for causation standard is ill suited to discrimination cases and inconsistent with tort principles.

In 2019, Just Justice Ginsburg, separately concurred in *Comcast,* however cautioned that "a strict but-for causation standard is ill-suited to discrimination cases and inconsistent with tort principles" but recognized it was an established principle from this Court's prior cases.

Legal scholars contend that Comcast makes it much harder for victims of discrimination to sue under crucial federal civil rights law.[34]

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[34] Erwin Chemerinsky, Dean and the Jesse H. Choper Distinguished Professor of Law, Berkeley Law, *A Major Step Backwards for Civil Rights: Comcast v. National Association of African-American Owned Media,* American Constitution Society, (July 2020), https://www.acslaw.org/a-major-step-backwards-for-civil-rights-comcast-v-national-association-of-african-american-owned-media/

Petitioner respectfully requests that this Court issue a writ of certiorari in her case to provide its lower courts with a well-defined process, not unlike that followed in *Sines v. Kessler*, 324 F. Supp. 3d 765 20218 U.S. Dist. LEXIS 113946.

### 4. *Twombly, Iqbal*[35] Nor *Comcast* Turn on the Allegation That a 42 U.S.C.S. § 1985(3) Conspiracy Deprived an Individual of Fundamental Constitutional Rights

*Twombly*, nor *Iqbal*, nor *Comcast* result from the allegation that a group of individuals formed a 1985(3) conspiracy, whose common objective was to deprive an ordinary black person on the basis race, of her basic and fundamental Constitutional right to property, without due process, and the right to contractual benefits, the same as whites received.

On the basis of this vast distinction, Petitioner contends that the branch of the rule of law represented by *Twombly*, *Iqbal*, and *Comcast* be extended to provide more guardrails and roadside barriers, in the form of procedures and analytic frameworks to be imposed on lower courts, to ensure that lower courts are constrained, should the urge strike, from deviating from their Constitutional mandates and to ensure that they are do not throw meritorious cases out with the non-meritorious.

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35 *Iqbal* tangentially involved fundamental constitutional rights but this Court resolved issue of qualified immunity.

In *Comcast*, this court adopted a narrow causation standard, some[36] would argue in contravention of the purpose of § 1981 and without regard for the statute's legislative history. The purpose of § 1981 was to guarantee "practical freedom" for Black citizens in the wake of the dissolution of chattel slavery.[37] The legislative history of the statute suggests as much.[38] The narrow causation standard applied in Comcast may make accomplishing these goals more difficult by increasing the burden on plaintiffs bringing § 1981 claims.[39]

Petitioner's mite of a federal civil rights case, has colossus implications for future victims of housing discrimination effectuated by civil conspiracies.

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[36] Civil Rights, Leading Case, *Comcast v. Nat'l Ass'n of African-American Owned Media* 134 HARV. L. REVIEW 580, November 2020.

[37] *Comcast*, 140 S. Ct. at 1020 (Ginsburg, J., concurring in part and concurring in the judgment) (quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 431 (1968)); *see also* George Rutherglen, *The Improbable History of Section 1981: Clio Still Bemused and Confused*, 2003 SUP. CT. REV. 303, 351 ("Its central purpose has always been to protect the right to participate in public life, regardless of race, and to provide remedies for both public and private violations of that right."

[38] *See Jones*, 392 U.S. at 435-36.

[39] One might argue that in light of *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), in which the Court recognized the possibility of multiple but-for causes, see id. at 1739-0, it is not precisely true that the Court is requiring something meaningfully more difficult to satisfy in requiring that a plaintiff show a but-for cause. However, based on *Bostock*, it is clear that the Court thinks of the motivating factor and but-for causation requirements as distinct. *See id.*

## CONCLUSION

Petitioner respectfully requests that this petition for writ of certiorari be granted.

Respectfully submitted,

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November 1, 2024

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