No. 24-680

IN THE

Supreme Court of the United States

DENNIS G. COLLINS, *et al.*,

Petitioners,

v.

METROPOLITAN LIFE INSURANCE COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTION PRESENTED

Whether, in reviewing a District Court's dismissal of claims under Federal Rule 12(b)(6), a United States Court of Appeals has the authority to affirm the District Court's dismissal based on the Appeals Court's own *de novo* review of the record where the grounds for dismissal were readily apparent from both the record and the briefing.

PARTIES TO THE PROCEEDING

Petitioners Dennis G. Collins, Suzanne Collins, David Butler, and Lucia Bott were the appellants in the United States Court of Appeals for the Eighth Circuit.

Respondent Metropolitan Life Insurance Company ("MLIC") was the appellee in the United States Court of Appeals for the Eighth Circuit.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, MLIC, a New York corporation with its principal place of business in New York, hereby discloses that it is a wholly owned subsidiary of MetLife, Inc., a publicly held corporation.

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COUNTER-STATEMENT OF THE CASE

The Petition for Writ of Certiorari ("Petition") in this case asks the Court to review the unanimous, well-reasoned decision of the Eighth Circuit Court of Appeals dismissing the underlying complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The Petition patently mischaracterizes the Eighth Circuit's opinion and fails to satisfy any of this Court's criteria for granting review: It identifies no genuine conflict among the federal Courts of Appeals on an issue actually presented in this case, raises no profoundly important question worthy of this Court's consideration, and does not (and cannot) establish that the Eighth Circuit acted contrary to this Court's precedents or deviated from the accepted and usual course of proceedings in the federal courts. The Petition should be denied.

Petitioners filed a putative class action complaint against MLIC arising out of Petitioners' purchase of long-term care insurance with an accompanying 5% Automatic Compound Inflation Protection Rider. Pet. App. 1a-2a. Petitioners alleged state law claims of fraud, fraudulent concealment, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS § 505/1 et seq., violation of the Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. § 407.020, and breach of the implied covenant of good faith and fair dealing. Pet. App. 8a-17a. The complaint raised no federal issues or claims.

Each count of Petitioners' complaint was rooted in their contention that the following representations in their insurance contracts were misleading: (1) "benefit

amounts will automatically increase each year with no corresponding increase in premium"; and (2) "[y]our premium is not expected to increase as a result of the benefit amount increases provided by this Rider[,] [h]owever, we reserve the right to adjust premiums on a class basis." Pet. App. 2a. The complaint alleged that, because MLIC later sought and obtained approval from state insurance regulators for rate increases, these representations were false and actionable. Pet. App. 10a.

MLIC moved to dismiss Petitioners' complaint pursuant to Fed. R. Civ. P. 12(b)(6), arguing that the filed-rate doctrine barred Petitioners' claims, that Petitioners failed to exhaust administrative remedies before the Missouri Department of Commerce & Insurance, and that Petitioners had failed to allege an underlying breach of contractual obligation that would have been required to advance a cause for breach of the implied covenant of good faith and fair dealing. Pet. App. 3a, 25a. As a core part of its arguments, MLIC raised that Petitioners' policies each prominently stated that that MLIC "may change the premium rate" (citing App.35, App.100, App.158, App.223; R. Doc. 1-1 at 10, R. Doc. 1-2 at 10, R. Doc. 1-3 at 3, R. Doc. 1-4 at 3) and that, "We [MLIC] reserve the right to change premium rates on a class basis." (citing App.59, App.124, App.183, App.245; R. Doc. 1-1 at 34, R. Doc. 1-2 at 34, R. Doc. 1-3 at 28, R. Doc. 1-4 at 25). Appellee's Resp. Br. at 8.

On February 3, 2023, the District Court granted MLIC's Motion to Dismiss, finding that Petitioners' causes of action were barred by the filed-rate doctrine or, alternatively, because Petitioners had failed to exhaust administrative remedies. Pet. App. 36a-51a. Petitioners appealed the District Court's dismissal to the Eighth Circuit.

On September 20, 2024, in a unanimous decision, a three-judge panel (the "Panel") affirmed the District Court's Order. Pet. App. 3a. The Panel held that the complaint's allegations were refuted by the plain terms of the insurance contracts upon which they brought suit (and which were attached to the complaint and detailed at length in the parties' briefing). The Panel exercised its discretion to affirm the dismissal under Rule 12(b)(6) based on its conclusion that the claims failed to state a plausible state law cause of action. Pet. App. 3a. The Panel thus did not need to address the District Court's reasoning for dismissal, which also was under Rule 12(b)(6).

The Panel assumed the facts, but not legal conclusions, alleged in the complaint were true. Pet. App. 6a, n3. The Panel specifically acknowledged the statements on which Petitioners allegedly relied: "Your premium is not expected to increase as a result of the benefit amount increases provided by this Rider," and increases in the benefit amount would have "no corresponding increase in premium." Pet. App. 8a. But the Panel ruled as a matter of law that such statements cannot give rise to a state law fraud claim: "We fail to see a plausible claim of intentional fraud or fraudulent concealment." Pet. App. 9a.

The Panel noted that "[MLIC] did not represent that it would never increase premiums. The Inflation Protection Rider stated in bold print that MLIC "reserve[s] the right to adjust premiums on a class basis." Pet. App. 9a. The Panel further held that the Complaint provided no basis for Petitioners' conclusory allegations that MLIC either fraudulently claimed it would not increase premiums, Pet. App. 10a, or that it knew, when it issued the policies, that it definitively would raise premiums. Pet. App. 11a.

With respect to the state law statutory claims, the Panel held as a matter of law that neither the MMPA nor the ICFA created a cause of action that could be raised against MLIC, and, since the claims were premised on the same alleged fraudulent statements that the Court determined were inactionable, the statutory claims failed for that reason as well. Pet. App. 12a-15a.

In their Petition, Petitioners mischaracterize the Eighth Circuit's decision by claiming that the Panel relied on a failure to plead fraud with particularity under Rule 9(b), as opposed to a dismissal for failure to state a claim under Rule 12(b)(6). This mischaracterization infects their Questions Presented and pervades the Petition but finds no support in the Panel opinion, which clearly held that the complaint failed to state a plausible claim for relief and affirmed the District Court's Order dismissing under Rule 12(b)(6). Pet. App. 3a. The Petition presents a question not worthy of this Court's consideration and instead involves only the factbound application of settled law to state law claims.

ARGUMENT

The Petition provides no reason for this Court to review the unanimous decision of the Panel affirming the District Court's dismissal of Petitioners' claims under Fed. R. Civ. P. 12(b)(6). Petitioners rely on *dicta* in various contexts suggesting that Circuits "ordinarily", "typically" or "generally" refrain from ruling on issues not specifically briefed by the parties below and decline to allow *the parties* to raise a new issue on appeal. *See* Pet. Br. at 5-6. Petitioners then seek to manufacture a purported "Circuit split" by transforming these general notions

into what Petitioners claim is an absolute restriction on a Circuit's discretion to affirm on any ground supported by the record. There is no such prohibition, and no conflict of authority here.

I. The Circuits May Affirm Dismissal Under Rule 12(b)(6) for Any Reason Supported by the Record.

In affirming the District Court's dismissal for failure to state a claim under Rule 12(b)(6), the Panel concluded that it did not need to reach the questions whether (1) the filed rate doctrine applied to Petitioners' claims or (2) they failed to exhaust their administrative remedies. Instead, based on the Panel's *de novo* review, the Complaint on its face revealed a fundamental flaw: it failed to state any plausible cause of action. The Panel cited well-established Eighth Circuit precedent that the Court "may affirm on any basis supported by the record." Pet. App. 3a (citing *UMB Bank, N.A. v. Guerin*, 89 F. 4th 1047, 1051 (8th Cir. 2024).

This standard of review encompassing the discretion and authority to affirm a lower court judgment on any basis supported by the record is settled—it is recognized by this Court. *See Thigpen v. Roberts*, 468 U.S. 27, 30 (1984) ("[W]e may affirm on any ground that the law and the record permit and that will not expand the relief granted below."). And every Circuit is in accord.[1]

1. *Dunn v. Trustees of Bos. Univ.*, 761 F.3d 63, 71 (1st Cir. 2014) ("We need not decide whether [the district court's] ruling was correct. Again, we may affirm on any basis supported by the record.");*Universal Church v. Geltzer*, 463 F.3d 218, 229 (2d Cir. 2006) ("Although it behooves appellees to raise all of their defenses on appeal because the appellate court can affirm on any

II. There is No Circuit Split With Respect to the Eighth Circuit's Decision.

Petitioners' contention that the Panel issued a decision in "conflict with" the law in the Fifth, Seventh, Tenth and

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basis supported by the record, even one not relied on by the lower court, we are not aware of any case requiring them to do so."); *TD Bank N.A. v. Hill*, 928 F.3d 259, 270 (3d Cir. 2019) ("We may affirm on any basis supported by the record, even if it departs from the District Court's rationale."); *Greenhouse v. MCG Cap. Corp.*, 392 F.3d 650, 660 (4th Cir. 2004) ("[W]e are not compelled to address whether the district court reached its decision in the correct fashion, so long as we believe—as we do—that the result is supported by the record."); *United States v. $4,480,466.16 in Funds Seized from Bank of Am. Acct. Ending in 2653*, 942 F.3d 655, 658 (5th Cir. 2019) ("We may affirm the district court's judgment on any basis supported by the record."); *Angel v. Kentucky*, 314 F.3d 262, 264 (6th Cir. 2002) ("[W]e are free to affirm the judgment on any basis supported by the record. This is especially so where the underlying facts are undisputed."); *Payne for Hicks v. Churchich*, 161 F.3d 1030, 1038 (7th Cir. 1998) ("[A]s a prudential matter and in the interests of judicial economy, we should examine the entire record and should affirm on an alternate basis if the record reveals that the district court's decision was correct."); *Reeder v. Ks. City Bd. of Police Comm'rs*, 733 F.2d 543, 548 (8th Cir. 1984) ("We have power to affirm the judgment below on any ground supported by the record, whether or not raised or relied on in the District Court."); *Moreland v. Las Vegas Metro. Police Dep't*, 159 F.3d 365, 369 (9th Cir. 1998), as amended (Nov. 24, 1998) ("We may affirm the district court's judgment on any ground finding support in the record, even if it relied on the wrong ground or reasoning."); *Cayce v. Carter Oil Co.*, 618 F.2d 669, 677 (10th Cir. 1980) ("This Court has held that an appellate court will affirm the rulings of the lower court on any ground that finds support in the record, even where the lower court reached its conclusions from a different or even erroneous course of reasoning."); *Reid v. Republic Bank & Tr. Inc*, 805 F. App'x 915, 916 (11th Cir. 2020) ("We may affirm the district court's dismissal on any ground supported by the record.").

Eleventh Circuits is incorrect. None of those Circuits "prohibit" appellate courts from affirming a judgment on alternative grounds, and Petitioners have identified no such holding. None of the cases Petitioners cite holds that a Circuit cannot affirm a Rule 12(b)(6) dismissal based on its independent determination that a complaint does not state a plausible cause of action. To the contrary, every case Petitioners invoke is either inapposite or fully consistent with the Panel's decision here.

1. The Fifth Circuit En Banc Endorsed the General Rule of Discretion.

Petitioners, contending the Fifth Circuit has held that appellate courts are "prohibited" from affirming a lower court pursuant to reasoning different than that raised by the parties, cite only the *dissent* in *Coggin v. Longview Indep. Sch. Dist.* That dissent was from the Fifth Circuit's *en banc* majority decision "to base its opinion on a theory never raised by the parties in the case." *Coggins*, 337 F.3d 459, 468-69 (5th Cir. 2003) (Jones, J., dissenting). A dissent (from an *en banc* decision no less) does not create a Circuit split.[2]

2. The Seventh Circuit Endorsed the General Rule of Discretion.

Similarly, although the Seventh Circuit in *Frederick v. Maryland Nat. Bank* acknowledged that courts generally

2. Indeed, that dissent acknowledged that Circuits have the power to affirm on grounds not raised by the parties; its disagreement with the majority was limited to whether the case presented provided the type of circumstances justifying the exercise of that power. *Id.* at 469.

should refrain from ruling on arguments not raised by the parties below, the Court in that case exercised its discretion to affirm the district court's decision based on its own review of the record. *Frederick*, 911 F.2d 1, 2 (7th Cir. 1990). The *Frederick* court (like the Panel here) recognized that the complaint obviously failed to state a plausible claim and it would be a waste of judicial resources not to affirm. *Id.* Petitioners quote the Seventh Circuit's discussion in *Frederick* of the general practice to refrain from ruling on arguments not presented by the parties but omit its very next statement noting an "exception" to that rule. Indeed, *Frederick* applied that exception to hold, on grounds parties had not argued, the complaint did not state a plausible claim as a matter of law. *Frederick*, 911 F.2d 1, 2 (7th Cir. 1990).

3. The Tenth Circuit Has Not Endorsed Petitioners' Proposed Rule.

Petitioners cite a criminal case, *United States v. Woodard*, in which the Tenth Circuit declined to affirm on alternative grounds not argued by the parties. That case does nothing to support Petitioners because it did not hold that an appellate court cannot affirm for reasons apparent from the record but not argued below. The Tenth Circuit simply rejected *the merits* of the alternative basis to affirm urged by the dissent. Though the Court opined it might not be "prudent" to affirm on grounds not argued below, it did not conclude it *lacked authority* to do so. *Woodward*, 5 F.4th 1148, 1155 (10th Cir. 2021).

Petitioners also ignore other Tenth Circuit precedent acknowledging there are circumstances where *sua sponte*

affirmance is appropriate. *See Velasquez v. Utah*, 857 F. App'x 971, 975 n. 5 (10th Cir. 2021) ("[W]e treat arguments for affirming the district court differently than arguments for reversing it. We have long said that we may affirm on any basis supported by the record, even if it requires ruling on arguments not reached by the district court or even presented to us on appeal."); *A.M. v. Holmes*, 830 F.3d 1123, 1146 n. 11 (10th Cir. 2016) ("[S]uch a decisional approach is particularly acceptable and proper when . . . the matter at issue involves construing the plain terms of statutes—a quintessentially legal undertaking.") (internal citation omitted).

4. The Eleventh Circuit's Jurisprudence Is Not Inconsistent.

Finally, Petitioners rely on *United States v. Campbell*, another criminal law case, which actually stands for the proposition that an appellate court may, in its discretion, *sua sponte* resurrect even "forfeited issues" never raised below. 26 F.4th 860, 872 (11th Cir. 2022), *cert. denied*, 143 S. Ct. 95 (2022) (internal quotations omitted). In *Campbell*, the Eleventh Circuit explained that "the refusal to consider arguments not raised is a sound prudential practice, rather than a statutory or constitutional mandate, and there are times when prudence dictates the contrary." *Id.* at 872-73 (quoting *Davis v. United States*, 512 U.S. 452, 464 (1994) (Scalia, J., concurring)).

III. In Affirming the Dismissal, The Panel Relied Solely on the Record.

1. The Panel Affirmed Dismissal of the Fraud Claims Under Rule 12(b)(6) Based on its *De Novo* Review of the Record.

Petitioners incorrectly claim that the Panel affirmed the District Court under Rule 9(b). It did not. The Panel affirmed for failure to state a claim upon which relief could be granted under Rule 12(b)(6). Indeed, the Panel's opinion begins, "[r]eviewing *de novo*, we affirm the dismissal because [Petitioners'] complaint fails to state a claim upon which relief can be granted." Pet. App. 3a. The Panel's discussion of the fraud claim likewise concludes with the statement, "[b]ecause the Complaint fails to allege a material false statement or omission that Plaintiff relied on, the Complaint fails to state a claim for fraud." Pet. App. 12a. The Panel specifically accepted the factual allegations in the Complaint as true, as required under Rule 12(b)(6). Pet. App. 6a.

Rule 9(b) requires a party alleging fraud to "state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). The Panel noted the requirements of Rule 9(b), Pet. App. 8a, 11a, but its affirmance was based on the legal conclusion that none of Respondent's alleged misstatements—the Panel quoted them—could plausibly be considered false as a matter of law. The Panel stated:

> We fail to see a plausible claim of intentional fraud or fraudulent concealment. MetLife did not represent that it would never increase

> premiums. The Inflation Protection Rider stated in bold print that MetLife "reserve[s] the right to adjust premiums on a class basis."
>
> . . .
>
> We find no support for Plaintiffs' conclusory allegation that MetLife fraudulently concealed at the time it issued the policies that it would later raise premiums. Met Life expressly reserved the right to increase premiums.

Pet. App. 9a, 11a. The statements on which the Panel relied were in Petitioners' Complaint and in the parties' briefing in both the District Court and the Eighth Circuit. Pet. App. 21a; *see also*, Appellant's Br. at 8; Appellee's Resp. Br. at 8-9. There is no basis for Petitioners' contention that they were deprived of an opportunity to replead under Rule 9(b). Petitioners' claims were dismissed under Rule 12(b)(6) because they are implausible as a matter of law in light of MLIC's express written representations to Petitioners which Petitioners specifically pleaded in and attached to their complaint.[3]

3. Even taken at face value, the question Petitioners purportedly raise—whether a Court of Appeals can dismiss a complaint for failure to state a claim under Rule 12(b)(6) based on the record below, but for a different reason than that relied on by the district court or argued by the parties—is hardly an issue of national importance.

2. The Panel Determined Petitioners Failed to State any State Law Statutory Claim—a State Law Question that does not Merit Review.

The Panel's dismissal of the state law statutory claims was not the resurrection of a "statutory defense," as Petitioners claim, but rather was a plain reading of the MMPA and the ICFA. Pet. App. 12a-15a. Specifically, the Panel held as a matter of law that neither the MMPA nor the ICFA provided a cause of action against Respondent because the MMPA cannot be asserted against an insurer (which Petitioners' Complaint acknowledges would include Respondent) and the ICFA cannot be asserted in response to an act required by state regulations (the applicable regulations require the precise language that Petitioners claim is false). Pet. App. 13a, 15a.

The Panel was well within its authority to rule on such pure state law legal questions. *See AMG Cap. Mgmt. v. Fed. Trade Comm'n*, 593 U.S. 67, 74 (2021) (interpretation of a statute is a "purely legal question"); *Muscarello v. United States*, 524 U.S. 125, 132, (1998) (same); *see also Arcadia, Ohio v. Ohio Power Co.*, 498 U.S. 73, 77 (1990) (bypassing arguments presented by the parties below because the underlying administrative orders were outside the scope of a statutory scheme and reaching its holding by addressing, "another question antecedent to these and ultimately dispositive of the present dispute: whether the [] orders before us impose requirements with respect to a subject matter that is within the scope of § 318. We believe they do not."). Dismissing untenable claims based on clear statutory language is precisely the course taken by the Seventh Circuit in *Frederick*, the case cited by Petitioners and discussed above. 911 F.2d at 1

(explaining, "[w]hen a statute expressly confines liability to X's and the defendant is a Y, the suit is frivolous," in holding it was proper to affirm dismissal on grounds not argued below).

Petitioners cite no case that suggests, let alone holds, an appellate court cannot affirm dismissal on such a state law legal basis. Regardless, what Petitioners really are complaining about is the factbound application of well-settled federal procedural law to federal court review of purely state law claims.

IV. Petitioners Fail to Identify Conflicts with Supreme Court Precedent.

Petitioners do not cite a single case where this Court reversed a Circuit for affirming a Rule 12(b)(6) decision on grounds different than those argued below but otherwise apparent from the record.

For example, Petitioners cite *United States v. Sineneng-Smith*, a case addressing the possible overbreadth of a criminal statute on First Amendment grounds. But this case involved extraordinary circumstances, in no way similar to the Panel's decision. There, the Ninth Circuit essentially hijacked the defendant's case, "mov[ing]" it "onto a different track" by inviting the amici to "brief and argue issues framed by the panel, including a question Sineneng-Smith herself never raised earlier." 590 U.S. 371, 374 (2020). That is, rather than review the record on appeal, the Ninth Circuit appointed amici to create an entirely new record based on questions the Ninth Circuit framed and instructed amici to advocate for a position directly contrary to the arguments the defendant made.

Even so, the *Sineneng-Smith* decision noted, "a court is not hidebound by the precise arguments of counsel." *Id.* at 380. Under the unique and highly unusual circumstances presented, this Court concluded the Ninth Circuit's "takeover" was an abuse of discretion. *Id.* at 379-80. There was no such "takeover" here but rather a decision firmly rooted in the record.

Finally, the other cases Petitioners cite also are readily distinguishable. *Lankford v. Idaho*, 500 U.S. 110, 126-27 (1991), arose in the specific context of requiring notice that a prisoner's sentencing could include the death penalty—it did not establish a "rule", as Petitioners suggest, that the Panel here was required to permit supplemental briefing in this civil case. *Wood v. Milyard*, 566 U.S. 463 (2012) and *Day v. McDonough*, 547 U.S. 198 (2006), were habeas cases involving a defendant's waiver of certain rights, *i.e.*, rights the petitioners had abandoned and could not legally raise.

It is telling that Petitioners must rely on unusual and extreme criminal cases. They were not deprived of "fair notice and an opportunity [] to present their positions." Pet. Br. at 12.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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