No.

In the Supreme Court of the United States

JOHN DOE CORPORATION, PETITIONER

v.

KENNERLY, MONTGOMERY & FINLEY, P.C.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF TENNESSEE

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The state trial court summarily dismissed petitioner's complaint under a "COVID-19 plan" *without even attempting to provide any notice to petitioner before the dismissal was effected* (despite having petitioner's counsel's contact information at that time); as a result, no meaningful opportunity to be heard was ever provided to petitioner before the dismissal was effected.

The Court of Appeals of Tennessee upheld the dismissal, and the Supreme Court of Tennessee declined discretionary review of this case.

Consequently, the question presented is:

Whether, in holding that a state trial court can summarily dismiss a plaintiff's complaint without attempting to provide notice to the plaintiff before the dismissal was effected when the trial court had the plaintiff's counsel's contact information, the decision of the Court of Appeals of Tennessee in this case is in conflict with relevant decisions of this Court as to this important federal question concerning due process of law, and whether that decision has the potential to immediately and adversely affect millions of state-court civil cases if not corrected by this Court.

CORPORATE DISCLOSURE STATEMENT

John Doe Corporation (Doe or petitioner) is a Tennessee professional corporation. It has no parent corporation, and no publicly held company owns 10% of more of its stock.

RELATED PROCEEDINGS

John Doe Corp. v. *Kennerly, Montgomery & Finley, P.C.*, No. 2-343-20, Circuit Court of Tennessee, Knox County. Judgment entered Feb. 15, 2023.

John Doe Corp. v. *Kennerly, Montgomery & Finley, P.C.*, No. E2023-236-COA-R3-CV, Court of Appeals of Tennessee. Judgment entered May 28, 2024.

John Doe Corp. v. *Kennerly, Montgomery & Finley, P.C.*, No. E2023-236-SC-R11-CV, Supreme Court of Tennessee. Order denying discretionary review entered on Nov. 18, 2024; corrected Feb. 5, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Doe respectfully petitions this Court for a writ of certiorari to review the judgment of the Court of Appeals of Tennessee in this case.

PROCEEDINGS BELOW

The opinion of the court of appeals is not reported; it is available at 2024 WL 2723762 and 2024 Tenn. App. LEXIS 230. It is reproduced in the appendix (App.) at 1a. (For purposes of information, the judgment of the court of appeals was entered on the same day as the opinion, which is why it is not listed here as well.)

The order from the court of appeals denying rehearing is not reported; it is reproduced in the appendix at 30a.

The order of the Supreme Court of Tennessee denying discretionary review of this case is also not reported; it is available at 2024 Tenn. App. LEXIS 470. It is reproduced in the appendix at 28a.

Further, the state trial court's order summarily dismissing petitioner's complaint is not reported. It is reproduced in the appendix at 29a. And its order denying petitioner's motion to alter or amend is not reported as well. It is reproduced in the appendix at 32a.

JURISDICTION

Petitioner's application seeking discretionary review of this case by the Supreme Court of Tennessee was denied on November 18, 2024 (App., *infra*, 28a). As a result, this Court has jurisdiction to issue the requested writ and review this state-court case under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution reads *in toto*:

> 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, § 1.

STATEMENT

Doe's complaint was filed on October 28, 2020, by its former counsel in this case, against Kennerly, Montgomery & Finley, P.C. (KMF) in the Circuit Court

of Tennessee, in Knox County.[1] App., *infra*, 2a.

At the time this civil action was filed, the COVID-19 pandemic was ongoing. In response to it, the trial court adopted rules to govern its proceedings during that time (which it was ordered to do by the Supreme Court of Tennessee). See The 6th Judicial Dist., Knox Cnty., Tenn., Amended COVID-19 Comprehensive Plan of Action (May 5, 2020) (Local Rules) <https://tinyurl.com/yh4hu3ku>; App., *infra*, 4a.

Under the Local Rules, "[j]udges [were] charged with the responsibility of ensuring that *core constitutional functions and rights* [*were*] *protected*" under plans relating to the COVID-19 pandemic. *In re COVID-19 Pandemic*, No. ADM2020-428, Order Modifying Suspension of In-person Ct. Proceedings & Further Exten. of Deadlines ¶ 4, at 2 (Tenn. Apr. 24, 2020) (emphasis added) (SCOTN Order) <https://tinyurl.com/ycy2pnkp>.

Regarding motions and their hearings under those rules, they read in pertinent part that "the Court *may* choose to rule *without need for a hearing*." Local Rules 3 (emphasis added).

Further, those rules required attorneys to include an email address on their filings with the trial court, *id.* at 2 ("All pleadings filed after May 1 2020 should include an email address for all attorneys or

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[1] For purposes of information, and despite the fact that the record throughout refers to the "Circuit Court for Knox County, Tennessee" or similar iterations, there is only *one* circuit court in the State of Tennessee, which sits throughout the different counties of the state. See *Mid-South Milling Co.* v. *Loret Farms, Inc.*, 521 S.W.2d 586, 590 n.2 (Tenn. 1975) (noting that the state's *nisi prius* court is the circuit court *of the state*, not of the counties).

[*sic*] record or pro se parties.").[2]

Those rules also read in pertinent part "Motion dockets are cancelled until further notice. Until further notice, counsel are not permitted to notice a matter for hearing *without the court's consent*," *ibid.* (emphasis added).

KMF filed its *first* motion to dismiss on June 3, 2021; and despite the Local Rules reading that the trial court *may* rule on a motion *without a hearing* if the motion had been pending for more than thirty days with no response filed to it, *no action was ever taken by the trial court on that motion* (again, even though it had been pending for more than thirty days when Doe's current counsel appeared in this case on July 7, 2021). See, App., *infra*, 2a–11a.

After Doe's current counsel appeared in this case on Doe's behalf via an agreed order of substitution, KMF filed its *second* motion to dismiss. *Ibid.* That motion was identical to the first one except for the certificate of service. *Ibid.*

While the parties were trying to gather possible dates to submit to the trial court to obtain permission to have KMF's motion to dismiss heard *because motion could not be set without court permission*, see Local Rules 2, the trial court summarily dismissed Doe's complaint via KMF's *second* motion to dismiss—*without even attempting to provide any notice*

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[2] Ostensibly, that would have been so the trial court could contact the parties to a civil action via email if the need arose (for example, to inform a plaintiff's counsel that the trial court was considering dismissing plaintiff's complaint, *inter alia*).

Further, at that time, attorneys' filings were also required to include an attorney's address and telephone number. Tenn. R. Civ. P. 11.01(a) <https://tinyurl.com/4yj6r2bt>.

to Doe before the dismissal was effected. App., *infra*, 3a–4a.[3]

As the record reflects, the trial court made no effort to notify petitioner's counsel that it was contemplating a dismissal of petitioner's complaint despite having petitioner's counsel's email address, mailing address, and telephone number. See, App., *infra*, 2a–11a.

Doe then moved to alter or amend that judgment of dismissal by motion,[4] based on, *inter alia*,

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[3] As an aside, motions to dismiss are *not* favored under substantive Tennessee law. *Dobbs* v. *Guenther*, 846 S.W.2d 270, 273 (Tenn. Ct. App. 1992) ("[T]hese motions [(i.e., motions to dismiss)] are not favored[.]"), perm. app. denied, (Tenn. Jan. 19, 1993). As a result, they are *rarely* granted. *Id.*

This is especially true since the Tennessee has rejected "*Twiqbal*" and recently reaffirmed that it is a notice pleading state. *Webb* v. *Nashville Area Habitat for Humanity*, 346 S.W.3d 422, 424 (Tenn. 2011) ("[W]e decline to adopt the new *Twombly/Iqbal* [('*Twiqbal*')] 'plausibility' pleading standard and affirm the judgment of the Court of Appeals."). Consequently, a Tennessee trial court "should grant a motion to dismiss 'only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.'" *Id.* (citing numerous authorities for this proposition).

Additionally, even though *Dobbs*, *supra*, is a decision of Tennessee's intermediate appellate court, it is "controlling authority for all purposes" in Tennessee state courts because it is a reported decision. See Tenn. Sup. Ct. R. 4(G)(2) ("Opinions reported in the official reporter, however, shall be considered controlling authority for all purposes unless and until such opinion is reversed or modified by a court of competent jurisdiction.") <https://tinyurl.com/58h7nj9n>.

[4] App., *infra*, 12a–15a (citing Tenn. R. Civ. P. 59.04 <https://tinyurl.com/m7h9kre8>).

Further, the standard of review of for a motion to alter or

a due-process violation under the Fourteenth Amendment.[5] *Id.* at 4a–5a.

The motion to alter or amend was denied by the trial court. *Id.* at 7a. Regarding the Fourteenth Amendment due-process issue, the trial court held that it "was without merit." App., *infra*, 42a.

Doe then timely appealed to the Court of Appeals of Tennessee; one of the issues raised was the due-process issue under the Fourteenth Amendment (which was also raised in the trial court). *Id.* at 11a.

That court upheld the trial court's dismissal. *Id.* at 27a. That court wrote that the Fourteenth Amendment due-process issue was "devoid of merit."

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amend is much more rigorous that the one used on a motion to dismiss. As to a motion to dismiss, it is no-set-of-facts standard. See, *supra*, footnote 3. As to a motion to alter or amend a judgment, that standard of review is an abuse-of-discretion standard, see, *infra*, App. 13a.

[5] The motion seeking to alter or amend was heard by a different trial judge because the trial judge who summarily dismissed petitioner's complaint below had been the defendant's counsel in the case that birthed this legal malpractice case and recused himself upon Doe's motion because of that fact. App., *infra*, 5a–6a. This, too (*i.e.*, the dismissal of petitioner's complaint by a judge who had been adverse to petitioner in the case that birthed this legal malpractice case), arguably, was a due-process violation in and of itself. See *Caperton* v. *A.T. Massey Coal Co.*, 556 U.S. 868, 872 (2009) ("[T]here are objective standards that require recusal when the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." (Citation omitted.) (Internal quotation marks omitted.)).

Id. at 24a.[6]

Petitioner sought review by the Supreme Court of Tennessee (one of the issues raised was the due-process one). Discretionary review was denied by that court on November 18, 2024. *Id.* at 28a.

REASONS FOR GRANTING THE PETITION

Petitioner's cause of action was taken via state action under a "COVID-19 plan" *without the trial court ever attempting to notify petitioner that it was contemplating such a dismissal* (despite having all of petitioner's counsel's contact information prior to the dismissal). That deprivation of property was upheld by the state courts below. As result, the requested writ should be granted because those courts decided an important federal question in a way that conflicts with relevant decisions of this Court (as due process under the Fourteenth Amendment) See, *e.g.*, *Mullane* v. *Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (generally requiring notice to be *attempted* before a state deprives a person of property, etc.); *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 428–437 (1982) (noting that a cause of action is property under the Fourteenth Amendment). This is explained in detail below. See, *infra*, at 8–16.

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[6] Respectfully, as the record reflects, that is *not* the case at all due to the lack of any notice ever being attempted by the trial court to apprise Doe of the contemplated dismissal. This case *has* merit. See App., *infra*, 2a–11a. As a result, and respectfully, this case is filled with merit. See *ibid.*

A. The Court of Appeals Erred in Holding That the Dismissal of Petitioner's Complaint Was Constitutional Despite the Fact That the Trial Court Never Attempted to Provide Any Notice of the Contemplated Dismissal to the Petitioner Before It Was Effected

When a state government deprives a person[7] of a property interest,[8] the Due Process Clause of the Fourteenth Amendment requires procedural fairness be afforded to that person. See U.S. Const. Amend. XIV, § 1 (reading in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law").

To determine if due process has been provided to a person under this amendment, two questions must be asked. The first is whether there is a life, liberty, or property interest at stake; the second is what process was due to the person. See *Logan*, 455 U.S. at 428 (1982) ("[W]e must determine whether Logan was deprived of a protected interest, and, if so, what process was his due.").

Regarding the first question, we know that a

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[7] Here, we know that Doe was a "person" for purposes of this due-process analysis. See *Grosjean* v. *Am. Press Co.*, 297 U.S. 233, 244 (1936) (noting that a corporation is a person for purposes of the Fourteenth Amendment's Due Process Clause).

[8] Doe's claim in this case is for legal malpractice, see, App., *infra*, 1a, which is a recognized tort claim under Tennessee substantive law. See *John Kohl Co.* v. *Dearborn & Ewing*, 977 S.W.2d 528, 529 (Tenn. 1998).

state-law claim like this one is a species of property that was protected by the Fourteenth Amendment's Due Process Clause. See *ibid.* ("[T]he Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." (Footnote omitted.)).

Ergo, the first question has been answered in the affirmative: there *was* a property interest at stake here in Doe's state-law claim, which was protected by the Due Process Clause of the Fourteenth Amendment at the time of its dismissal. *See ibid.*

That brings us to the second question, which is this: What procedures must have been afforded to Doe in the trial court to ensure that it received all the process it was due?

At a bare minimum, as a matter of federal law, notice must have been attempted; the trial court should have tried to notify Doe of the contemplated dismissal. This was explained by this Court in *Mullane*, to wit: "An *elementary* and *fundamental* requirement of due process *in* any proceeding which is to be accorded finality is *notice reasonably calculated*, *under all the circumstances*, *to apprise interested parties of the pendency of the action* and afford them an opportunity to present their objections." 339 U.S. at 314 (emphasis added) (citations omitted)[9]; See *Logan*,

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[9] Here it appears that the straightforward due-process test employed in *Mullane* should be used in this case in lieu of the balancing test employed in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976); this is because, *inter alia*, no notice was ever attempted; as a result, the adequacy, etc., of any notice need not be evaluated. See *Dusenberry* v. *United States*, 534 U.S. 161, 167–168 (2002).

Further, and to the extent KMF might argue that the

455 U.S. at 428–437 (same).

What does the phrase "reasonably calculated" mean in context of this case when the trial court had petitioner's counsel's email address, mailing address, and telephone number? Was the trial court required by the Due Process Clause of the Fourteenth Amendment to send notice to petitioner's counsel before it dismissed petitioner's complaint? *Absolutely*. (The trial court could have called petitioner's counsel, sent a letter, or an email to Doe's counsel to apprise Doe of the contemplated dismissal.)

While the Fourteenth Amendment's Due Process Clause does not require actual receipt by an affected person of any notice sent, see *Dusenberry* v. *United States*, 534 U.S. 161, 170 (2002) ("[W]e note that none of our cases cited by either party has required actual notice in proceedings such as this."), *it does require*

Local Rules provided notice because they read that the trial court *may* rule on a motion that had been pending for more than thirty days without a hearing, Doe submits that the trial court's failure to act on the ***first*** motion to dismiss after it had been pending for more than thirty days when Doe's current counsel appeared on its behalf in this case, and then summarily granting the ***second*** motion to dismiss, again, *without even attempting to notify Doe of the contemplated dismissal*, was arbitrary and capricious, and as a result, a due process violation in and of itself. See *Board of Regents* v. *Roth*, 408 U.S. 564, 589 (1972) ("[I]t is procedural due process that is our fundamental guarantee of fairness, our protection against *arbitrary*, *capricious*, and unreasonable government action." (Emphasis added.)); *Black's Law Dictionary* 128 (12th ed. 2024) (defining "arbitrary" in part as "involving a determination made without consideration of or regard for facts, circumstances, fixed rules, or procedures"); *id.* at 261 (defining the term "capricious" in part as "contrary to * * * established rules of law").

that an attempt at notice be made,[10] see *ibid.* (citing *Mullane* for this proposition); *Mullane*, 339 U.S. at 314 (requiring a state to provide notice reasonably calculated, *under all the circumstances*, to apprise interested parties of the pendency of the action before a person is deprived of property); *Jones* v. *Flowers*, 547 U.S. 220, 226 (2006) (citing *Dusenberry* and *Mullane* for this proposition as well).

So that raises the all-important question here, which is: Did the trial court even attempt to notify Doe of the contemplated dismissal before the complaint was dismissed? The answer is *no*. See, App., *infra*, 2a–11a. That was a violation of the Fourteenth Amendment's Due Process Clause; and the decision of the court of appeals upholding that dismissal is in conflict with relevant decisions of this Court on this important question of federal law. See, *supra*, at 8–11.

The court of appeals, however—*without citing one case from this Court concerning procedural due process under the Fourteenth Amendment's Due Process Clause*—was of the opinion that petitioner did receive "notice" here because "a motion to dismiss had been *filed*." App., *infra*, 26a (emphasis added).

Respectfully, that was *not* "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action" as required by *Mullane* and its progeny. Here is why: as pointed out above, the Local Rules read that a trial court *may* rule on a motion without a hearing if the

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[10] And, again, to reiterate, the trial court *had* petitioner's counsel's email address, mailing address, and telephone number before it summarily dismissed petitioner's complaint. See, *supra*, at 5.

motion had been pending for more than thirty days and no response filed. Local Rules 2. When petitioner's current counsel appeared in this case, however, KMF's *first* motion to dismiss had already been pending for more than thirty days (with no response filed) and the trial court had not ruled on it (*and never did*). App., *infra*, 3a. If anything, it was entirely reasonable for petitioner to conclude that the trial court was *not* going to rule on a motion of this nature without providing notice to petitioner's counsel and an opportunity to be heard. See *ibid.* This is especially true given the fact that the Local Rules were to be construed in accord with the United States Constitution, see SCOTN Order ¶ 4, at 2 ("[j]udges [were] charged with the responsibility of ensuring that *core constitutional functions and rights* [*were*] *protected*"); *also those rules had to yield to the dictates of our Constitution*, see, *e.g.*, *Vitek* v. *Jones*, 445 U.S. 480, 491 (1980) ("[T]hese minimum requirements being *a matter of federal law*, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." (Emphasis added.)); *Logan*,455 U.S. at 432 (citing *Vitek* for this proposition); *Cleveland Bd. of Educ.* v. *Loudermill*, 470 U.S. 532, 541 (1985) (same). See also Akhil Reed Amar, *America's Constitution: A Biography* 385–392 (2005) (discussing the general effect that the Fourteenth Amendment has on the states).

Further, since the trial court had the petitioner's counsel's email address, mailing address, and telephone number, see, App., *infra*, 2a–11a, it should have notified Doe's counsel that it was contemplating dismissing the complaint *before the*

dismissal was effected, which it was required by law to do. See *Mullane*, 339 U.S. at 314; *Dusenberry*, 534 U.S. at 170; *Jones*, 547 U.S. at 226.

To reiterate, *the trial court did not even attempt to provide notice to Doe's counsel before it summarily dismissed the complaint*. See, App., *infra*., 2a–11a. That, again, was a violation of the Fourteenth Amendment's Due Process clause and the decision of the court of appeals in this case upholding that dismissal is in conflict with relevant decisions of this Court on an important federal question, which provides a compelling reason to grant the requested writ of certiorari. See, *supra*, at 8–13.

B. The Court of Appeals' Error Has the Potential to Immediately and Adversely Affect Millions of State-Court Civil Actions If Not Corrected by This Court

States must comply with the Fourteenth Amendment's Due Process Clause, to wit: "[T]he great object of the first section of [the Fourteenth Amendment] is * * * to restrain the power of the States and compel them at all times to *respect these great fundamental guarantees*." Amar, *supra*, at 388 (emphasis added) (citation omitted); see U.S. Const. Amend. XIV, § 1 (protecting a person's property, *inter alia*, from deprivation by a state without due process of law being provided to that person before deprivation); *Mullane*, 339 U.S. at 314 (requiring, at a minimum, generally, reasonably calculated notice and a meaningful opportunity to be heard to be provided to a person before that person's property is taken via

state action); *Vitek*, 445 U.S. at 491 ("[T]hese minimum requirements[[11]] being *a matter of federal law*, they are not diminished by the fact that the State may have specified its own procedures [(*e.g.*, the Local Rules)] that it may deem adequate for determining the preconditions to adverse official action." (Emphasis added.) (Footnote added.)); *Logan*, 455 U.S. at 428 (noting that a cause of action is a "species of property" protected by the Fourteenth Amendment's Due Process Clause).

The court of appeals in this case has decided an important federal question in a way that conflicts with relevant decisions of this Court as to the Due Process Clause of the Fourteenth Amendment. See, *supra*, at 8–13. If the decision is not corrected by this Court, it will cause an erosion of the property rights protected under this amendment. That, respectfully, should not happen. See *Mullane*, 339 U.S. at 314.

The chances of "that" happening, however, are high given the large number of state-court civil cases filed each year. For example, according to the recent information from the State of Tennessee, there were 99,319 civil filings during in fiscal year 2022–2023 (55,536 chancery court filings and 43,783 circuit court filings).[12] See Tenn. Admin. Office of the Cts., Supreme Ct. of Tenn., Annual Report of the Tenn. Judiciary: Fiscal Year 2022–2023 15, 19 (Annual

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[11] *I.e.*, notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and a meaningful opportunity to be heard before the deprivation is effected. See *Mullane*, 339 U.S. at 314.

[12] For purposes of information, Tennessee is one of the few states that has separate chancery and circuit courts.

Report) <https://tinyurl.com/3mvp2vyt>.

According to the National Center for State Courts, based on the latest reporting from *only forty states*, there were 13,705,000 civil cases filed in the United States in 2022. See Miriam Hamilton, Nat'l Ctr. for State Cts., Civil Case Trends 1 (Oct. 2024) (Hamilton) <https://tinyurl.com/bddttk45>.

That is 13,804,319 cases this case could potentially—and immediately—be affect if cited by any court that decides to cite this case and summarily dismiss a pending claim (even if only a small percentage of cases are affected, that could still be *millions* of cases).[13] See, *supra*, at 14–15.

Therefore, the holding of the court of appeals in this case is not only in conflict with relevant decisions of this Court—and in error—*it could adversely affect* millions *of state-court civil cases if not corrected by the Court*[14]; and that cannot be allowed. See U.S. Const. Amend. XIV, § 1; *Mullane*, 339 U.S. at 314; *Vitek*, 445 U.S. at 491; *Logan*, 455 U.S. at 428; see also, Amar, *supra*, at 388 ("[T]he great object of the first section of [the Fourteenth Amendment] is * * * to restrain the power of the States and compel them at all times to *respect these great fundamental guarantees*." (Emphasis added.) (Citation omitted.)).

This, too, is a compelling reason (in addition to the conflict with this Court's relevant decisions) to grant the requested writ of certiorari in this case

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[13] In all candor, even if this case is cited only one time in support of a dismissal of a claim without notice being *attempted* to the claimant, that will be one too many cases.

[14] See Annual Report at 15, 19; Hamilton 1.

because of the potential immediate and adverse affect on *millions* of state-court civil action. See, *supra*, at 13–16.

CONCLUSION

This Court should grant the petition for a writ of certiorari to review this case for at least two reasons. The first being that the decision of the court of appeals is in conflict with relevant decisions of this Court on an important federal question; the second being the potential adverse and immediate effect this decision will have on millions of state-court civil cases. Both are compelling reasons.

Respectfully submitted,

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APPENDIX

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