No._____

IN THE

Supreme Court of the United States

ISAAC MULAMBA,
Petitioner,

v.

THE BOARD OF EDUCATION OF BALTIMORE COUNTY,
Respondent.

On Petition for a Writ of Certiorari
to the Appellate Court of Maryland

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The supremacy of federal law and the Supreme Court's authority in resolving conflicts between federal and state law are well established:

- State courts are subject to the jurisdiction of the Supreme Court and federal government. See *Chisholm v. Georgia*, 2 U.S. 419 (1793).
- "The Supremacy Clause demands that state law yield to federal law...The importance of the Supreme Court's role as the final arbiter of federal constitutional questions requires that state courts adhere to this Court's ruling[s]." *Michigan v. Long*, 463 U.S. 1032, 1040-1041 (1983).

The Appellate Court of Maryland, following binding state law and precedents, affirmed the Baltimore County Circuit Court's application of heightened pleading standards, that required stating a prima facie case at the pleading stage and dismissed the pro se plaintiff's complaint for failure to state a claim.

The question is:

"Whether a state court's application of heightened pleading standards to federal Title VII claims, beyond those required under Federal Rule of Civil Procedure 8(a) and by this Court, violates the Supremacy Clause by undermining the uniform enforcement of federal civil rights and depriving plaintiffs of access to federal remedies based on forum selection."

PARTIES TO THE PROCEEDINGS

The parties are petitioner, Isaac Mulamba, and respondent, the Board of Education of Baltimore County. In state court, Mulamba, proceeding pro se, brought claims against the Board under both state law and Title VII of the Civil Rights Act of 1964. Only the Title VII claims are at issue before this Court.

RELATED PROCEEDINGS

Mulamba v. The Board of Education of Baltimore County, ACM-REG-1656-2023, motion for reconsideration *en banc*, denied. (Md. App. Jan. 27, 2025)

Mulamba v. The Board of Education of Baltimore County, ACM-REG-1656-2023, No. 1656, September Term 2023, aff'd. (Md. App. Dec. 13, 2024)

Mulamba v. The Board of Education of Baltimore County, No:C-03-CV-23-001611, dismissed. (Balt Cnty Circ Court. Sept. 29, 2023)

Mulamba v. The Board of Education of Baltimore County, Petition No. 474, September Term 2024, cert denied. (Md. S. Ct. Apr. 25, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the Appellate Court of Maryland, which affirmed the dismissal of his Title VII employment discrimination claims. The Supreme Court of Maryland denied review, leaving the appellate court's decision as the final state-court ruling.

OPINIONS BELOW

The Appellate Court of Maryland denied *en banc* reconsideration. (App D. 1a)(Jan. 27, 2025)

The Appellate Court of Maryland affirmed. (App A. 3a)(Dec. 13, 2024)

The Circuit Court for Baltimore County dismissed petitioner's complaint for failure to state a claim. (App B. 33a)(Sept. 29, 2023)

The Supreme Court of Maryland denied certiorari. (App C. 53a)(Apr. 25, 2025)

JURISDICTION

This petition seeks review under 28 U.S.C. § 1257(a). The United States Supreme Court has jurisdiction under Article III, Section 2 of the Constitution.

RELEVANT STATUTORY PROVISIONS

A. FRCP 8(a)

A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain:

(1) a short and plain statement of the grounds

upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction.

(2) a short and plain statement of the claim showing that the pleader is entitled to relief, and

(3) a demand for judgment for the relief the pleader seeks. The relief may include relief in the alternative or different types of relief (monetary damages or injunction).

B. 42 U.S.C. § 2000e-2(a)(1)

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual" with respect to "compensation, terms, conditions, or privileges of employment" on the basis of race, color, religion, sex, or national origin.

C. Maryland SB 450

Workplace Harassment is "unwelcome and offensive conduct which need not be severe or pervasive..."

https://mgaleg.maryland.gov/2022RS/bills/sb/sb0450t.pdf

D. Maryland SPP Title 5-211(A)(2)

An EEO officer must investigate a written complaint of discrimination based on protected class and make a recommendation within 30 days of receiving the complaint.

https://dbm.maryland.gov/eeo/documents/title5.pdf

INTRODUCTION

The instant petition presents gender-role-reversed factual parallels to *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004). While *Suders* addressed employer liability for constructive discharge under Title VII due to supervisor harassment, Petitioner challenges the state courts' heightened pleading standards for Title VII claims that effectively nullify federal protections under analogous circumstances.[1]

[1] Petitioner respectfully submits that where the allegations set forth in a complaint are facially sufficient to vest a state court with jurisdiction over claims arising under federal law, such claims ought, as a matter of law, to be adjudicated primarily by federal legal standards—not through the prism of state-level analogues. To hold otherwise would balkanize federal anti-discrimination protections and invite a fragmented and inconsistent jurisprudence to undermine Congress's intent of equal justice for all. Over 80% of employment discrimination actions are filed in federal court while, e.g., in fiscal year 2023, the EEOC pursued 86% of its merit-based litigation in federal courts, with a mere 14% filed in state courts with concurrent claims.[2] These statistics reflect forum preference.

Yet another concern emerges upon closer examination: namely, the interpretive legacy of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)—collectively referred to as Twiqbal. In the instant case, the presiding judge dismissed the complaint for failure to state a claim on grounds that it contained "conclusory" statements, notwithstanding the pro se status of the plaintiff. The judge was sufficiently old that his "judicial experience or wisdom" could not be questioned. The judge never granted leave to amend, or time to retain counsel as requested; he denied defendant's own request for limited discovery; and appeared to prejudge by asking the defense at the hearing: "Did the plaintiff include anything different in his motion for summary judgment?" The defense replied loosely, "no,...etc." Later, the judge granted respondent's motion to dismiss, stating that the

1. State Courts' Selective Reliance on Abrogated Standards

i. Discrimination Analysis

The Appellate Court of Maryland used the abrogated "materially significant" test to evaluate the Title VII discrimination claims, despite the Supreme Court's decision in *Muldrow v. City of St. Louis, Missouri,* No 22-193, 601 U.S. ___ (2024), which rejected a heightened "materiality and significance" requirement for such claims (e.g., "holding that a transfer need not result in significant harm to be actionable under Title VII.").

ii. Retaliation Framework

The Appellate Court used the abrogated "ultimate employment decision" test to evaluate the retaliation claim, despite the Supreme Court's decision in *Burlington N. & S.F. Ry. Co. v. White*, 548 U.S. 53, 68 (2006), establishing the broader, contextual framework based on the "dissuade a reasonable worker" standard. The court relied mostly on state precedents, effectively narrowing the scope of retaliatory conduct.

Cont'd[1]

plaintiff did not make out prima facie cases of discrimination for his Title VII claims and dismissed the complaint without reaching the merits. Furthermore, the defense counsel warned the pro se appellant, in email, not to include evidence in the brief of appellant or *he would object.*

[2] Laura Beth Nielsen. *The Case of the Missing Civil Rights Trials*, 96 Judicature 4 (2013) and

(https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0)

iii. Harassment Threshold

The Appellate Court affirmed the lower court's dismissal of Plaintiff's workplace harassment claim at the pleading stage and used the abrogated "severe and pervasive" test, despite the decisions of two authorities:

(1) The Maryland's Legislature outlawed the 'arbitrarily-too-high' federal test in 2022 under *Md. Code Ann., State Gov't § 20-609(f)(Md. SB 450)*, mandating a "more lenient standard" for evaluating workplace harassment claims.

(2) *Harris v. Forklift Sys.*, Inc., 510 U.S. 17, 21 (1993) articulated the "severe or pervasive" standard but cautioned against imposing "rigid thresholds."

iv. Pro se complaints

The Appellate Court affirmed the lower court's dismissal of a pro se plaintiff's complaint for failure to state a claim, without granting leave to amend. This Court has consistently held that pro se complaints must be held to "less stringent standards than formal pleadings drafted by lawyers" and should be liberally construed. *Haines v. Kerner*, 404 U.S. 519 (1972). See also *Erickson v. Pardus*, 551 U.S. 89 (2007)(same).

2. Maryland State Courts' Standards of Review Violate the Supremacy Clause.

i. Encroachment on Congressional Legislative Power.

Federal Rule 8(a) sets forth minimum national standards for the adjudication of federal claims. Maryland's layered pleading tests circumvent

Congress's exclusive power to prescribe federal claims procedures under the Rules Enabling Act (28 U.S.C. § 2072).

ii. Preemption of Federal Procedural Standards

By demanding prima-facie factual allegations at the pleading stage, exceeding the baseline set in *Swierkiewicz v. Sorema N.A.*, 5 F. App'x 63, 65 (2d Cir. 2001), rev'd, 534 U.S. 511-12 (2002), Maryland state courts functionally rewrite Title VII's requirements, transforming an accessible federal procedure into an insuperable barrier before the claim reaches the merits. This contravenes the "prohibition against state procedural rules that 'burden or discriminate against' congressionally created rights." See *Brown v. Western Railway of Alabama*, 338 U.S. 294 (1949). See also *Felder v. Casey*, 487 U.S. 131 (1988)("States cannot 'subvert through procedural interposition' the substantive rights derived from federal law.")

iii. Undermining the Supreme Court as the final arbiter of constitutional questions

The Supreme Court enforces Congress's laws; state courts follow suit. See *Michigan*, supra (1983).

3. The Prima Facie Case

The quartet–*McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), together with *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981), *St. Mary's Honor Center v. Hicks*, 509 U.S. 502 (1993), and *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000)–established that the requirements of a prima facie

case for a Title VII plaintiff alleging employment discrimination change as the case progresses.

Swierkiewicz v. Sorema N.A (2002) held that "it would seem incongruous to require a plaintiff, in order to survive a motion to dismiss, to plead more facts than he may ultimately need to prove to succeed on the merits if direct evidence of discrimination is discovered." Further, the proposition that a Title VII plaintiff needed to plead prima facie elements to survive a motion to dismiss was rejected, emphasizing that Rule 8(a) requires only "a short and plain statement of the claim."

The discrimination complaint benefits from the temporary presumption of discrimination at the pleading stage and must be viewed in light of the plaintiff's minimal burden to show discriminatory intent. See *Littlejohn v. City of New York,* 795 F.3d 297, 311 (2d Cir. 2015)

4. The Petition

This Court retains a role when a state court's interpretation of federal law has been influenced by an accompanying interpretation of state law. *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P. C.*, 467 U.S. 138, 152, 81 L. Ed. 2d 113, 104 S. Ct. 2267 (1984). Likewise, this Court has jurisdiction over a state-court judgment that rests, as a threshold matter, on a determination of federal law. See *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 816, 92 L. Ed. 2d 650, 106 S. Ct. 3229 (1986)("This Court retains power to review the decision of a federal issue in a state cause of action."); *St. Louis, I. M. & S. R. Co. v. Taylor*, 210 U.S. 281, 293-294, 52 L. Ed. 1061, 28 S. Ct. 616 (1908).

This Court should do as it did in *Leatherman v. Tarrant County*, 507 U.S. 163 (1993): grant this petition and reaffirm the primacy of federal law under the Supremacy Clause by rejecting the encroachments of state court rulings that stray from the Supreme Court's constitutional and statutory interpretations—whether through direct rejection, silent disregard or through the artifice of selective misapplication.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

Qualifications.

Mulamba is a Black male and U.S. citizen of African descent in his mid-40s. He holds a Master's degree in Geophysics from the Pennsylvania State University and a Master of Public Policy from the University of Massachusetts. He was hired by respondent as a Data Manager, starting January 03, 2022 and had no documented performance issues during his tenure.

Responsibilities.

Mulamba previously worked in educational settings to expand educational access. His academic training and practical experience positioned him at the nexus of data-driven analysis and social policy, equipping him to address complex issues with both technical precision and understanding of policy implications. While working for respondent, he applied his expertise in special education, concentrating on systemic inequities in schooling—an area of heightened federal concern under statutes such as the No Child Left Behind Act (2001) and the

Every Student Succeeds Act (2015). Mulamba worked at the Central Office, implementing strategies to combat race-based disparities in areas including student discipline, suspension rates, and disability identification. The executive director was his direct supervisor.

Employment Terms.

Mulamba negotiated and accepted a remote work arrangement—three days remote and two days in-office—a key inducement to leave his probationary government position at Fairfax County Public Schools to facilitate knowledge transfer at Baltimore County Public Schools as a full-time government employee. He resided in Fairfax, VA which is 80 miles away from Towson, MD. His work could be done remotely 100%. Mulamba also negotiated an office space. Other inducements included annual salary raises, benefits, and a government pension.

Respondent's Policy Change.

Six months into the job and after a change in leadership, respondent required every employee to return to the office 4 days per week. This would impose on Mulamba a 640-mile weekly commute.

First, second and third Job Transfers.

In August 2022, the newly-appointed Executive Director Myers in the first online meeting, interjected: "No, I have Dan Klinger for that", as Mulamba was explaining his job responsibilities in the department of special education. During the meeting, Myers grinned, shook her head, and touched her hair, as if to convey Mulamba was overstating his role. They had never met before. Director Bailey was present. Klinger was a white male analyst in another

department and was not a government employee. Mulamba was hired as a full-time government employee, which cleared him to handle sensitive minors' data in the school district while Klinger was there. In the same meeting, Myers informed Mulamba that (1) he must return to the office per respondent's new policy and (2) he must vacate his office and transfer to a cubicle. In a follow-up meeting, Myers wouldn't hear anything as she picked up her pen, smashed it on the desk and reiterated her demands: "come back to the office and move to the cubicle."

Adverse actions.

Following the virtual meetings and email exchanges regarding workplace issues, Mulamba sought to de-escalate tensions by arranging an in-person meeting with Myers on August 29, 2022. However, rather than engaging in constructive dialogue, Myers—a white female—arrived with three other females: Bailey (African American), Secretary Armstrong (white), and Secretary Daniel (African American). Together, they confronted Mulamba in his office, screaming at him to "get out of the office" and let another female employee occupy it. That female was Armstrong—Myers' part-time secretary. The incident was witnessed by multiple female onlookers and left Mulamba feeling humiliated. Indeed, respondent maintains a female-dominated environment, consistent with broader national workplace demographics.

Retaliation.

After this culminating incident over seven months of such acts, Mulamba emailed Myers about his intent to report the matter to the EEO office.

Myers responded in this manner: (1)The same day, Myers scheduled a meeting for the following week, during which she threatened a performance evaluation if he reported the incident; (2) The next day, Mulamba found his office belongings shoved into his assigned cubicle; (3) Two weeks later, Myers summoned Mulamba to a disciplinary meeting for "insubordination" after his reporting to the EEO office on September 02, 2022–nothing happened in between–and instructed him to bring union representation; (4) Daniel said: "This African guy wants an office; would he have had an office in Africa?"; (5) Myers insisted that Mulamba come to the office daily instead of respondent's 4 days, amounting to 800-mile weekly commute; (6) Myers excluded Mulamba from the monthly departmental executive meetings, where he reported on data for about 16,000 students with disabilities; (7) Myers denied Mulamba's time-off requests, supported by a doctor's recommendation; (8) Myers reassigned some of Mulamba's exclusive managerial duties to Klinger; (9) Myers ceased all interactions with Mulamba; (10) Dr. Miller, a lower-corporate ranking white male director, informed Mulamba that "from now on you will report to me rather than Ms. Myers." [This was against organizational hierarchy and the job description.]; and (11) Respondent expunged Mulamba's profile from the department of special education website.

Resignation.

Mulamba contacted most of respondent's officials and offices for intervention and resolution of his issues, yet received no response. He resigned on November 11, 2022, nine weeks after filing the EEO

complaint. He submitted a two-week notice, citing discrimination, harassment, retaliation and the failure to accommodate his commute per agreed upon terms and doctor's recommendation.

Failure to Investigate.

The EEO officer did not comply with the Maryland statutory requirements to investigate a written complaint of discrimination based on protected class in a state agency and issue a recommendation within 30 days.[3] Further, the officer undermined the EEO process when he (1) sent two certified mails, urging Mulamba to withdraw the complaint after resignation; (2) agreed to conduct the EEO interview only after Mulamba threatened a lawsuit if he didn't; (3) refused to reschedule the interview when requested; 4) scheduled the EEO interview for February 28, 2023–the eve of the deadline to file a charge with the Maryland Commission on Civil Rights, thereby impeding the ability to pursue state administrative remedies; (5) said during the interview that "no Maryland court would accept video recording as evidence of his 'conduct'"; and (6) mailed the outcome letter asserting compliance, after exceeding the deadline by 180 days. The EEO director endorsed the "forged" official letter of compliance. The EEO director and the EEO officer are experienced attorneys, specializing in employment law.

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[3] Mulamba discovered the violation of statutory requirements in January 2024 while preparing for his appeal. The failure to investigate may be actionable under *Md. Code, Crim. Law § 9-305.*

PROCEEDINGS BELOW

The Circuit Court for Baltimore County dismissed petitioner's complaint for failure to state a claim, holding that the pro se plaintiff had not established prima facie cases of discrimination for his Title VII claims at the pleading stage. The Appellate Court of Maryland affirmed and denied reconsideration *en banc*. The Supreme Court of Maryland denied certiorari.

II. PROCEDURAL BACKGROUND

Mulamba commenced his lawsuit pro se and filed a Second Amended Complaint on April 19, 2023, in the Baltimore County Circuit Court. The complaint asserted Title VII claims including discrimination, retaliation, harassment, and constructive discharge; and state law claims.

The Board moved to strike the complaint for failure to number averments per local rules or, alternatively, for failure to exhaust administrative remedies.

The court scheduled a hearing on the motion to dismiss. Mulamba cured the deficiencies and the EEOC found that reasonable cause existed and issued a Right-to-Sue Notice.

The first judge vacated the hearing order.

The Board filed renewed its motion to dismiss, arguing that plaintiff failed to state a claim or, alternatively, that the court should strike the complaint for seeking relief exceeding the statutory damages limit specified for public schools in Maryland.

The court scheduled a new hearing on these grounds. At the hearing, Mulamba informed the judge he was seeking counsel through Maryland's Legal Hotline. After the hearing, Mulamba filed Requests for Admissions (RFAs) and a motion for summary judgment with the evidence.

The second judge granted the Board's motion for a protective order, extended the response time to the RFAs by 60 days; and ordered a stay of discoveries. Later, the judge denied the summary judgment motion as 'premature'.

The third judge granted the Board's motion to dismiss for failure to state a claim on September 29, 2023.

On December 13, 2024, the Appellate Court of Maryland summarily affirmed the circuit court's final judgment. It denied the motion for *en banc* reconsideration on February 27, 2025.

The Supreme Court of Maryland declined to review the case, denying the petition for a writ of certiorari on April 25, 2025.

III. REASONS FOR GRANTING THE WRIT

This case presents an opportunity to reaffirm the Supremacy Clause and Congress's intent regarding Title VII claims. The Maryland state courts' dismissal of petitioner's complaint for failure to state a claim—while requiring a prima facie case of discrimination at the pleading stage and selectively applying heightened standards to Title VII claims—(1) fits a pattern with other states and (2) conflicts with this Court's precedents and the Federal Rules of Civil Procedure.

This Court's intervention is necessary for the following reasons:

A. The State Statutory Landscape

Each of the fifty states has some form of employment discrimination statute.[4] While many are modeled partly after Title VII,[5] none of them are completely identical to the federal model.[6] Unlike the federal model, the states have omnibus statutes that encompass all of the protected statuses under one statutory framework.[7] This structural difference affords the state courts greater flexibility in interpreting and applying their laws. Some state and local discrimination statutes contain court directives to construe the statutes liberally,[8] language that is absent from the federal statutes.[9]

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[4] Jerome Hunt. *Ctr. for Am. Progress Action Fund, A State-by-State Examination of Nondiscrimination Laws and Policies* 23 (2012), [https://perma.cc/A8RQ-UQ6E] (cataloguing state employment discrimination statutes)

[5] Alex B. Long. *"If the Train Should Jump the Track...": Divergent Interpretations of State and Federal Employment Discrimination Statutes*, 40 Ga. L. Rev. 469, 480–505 (2006) at 524–25 & n.301 (noting the primary models from which state legislatures likely drew in enacting their own employment discrimination statutes...)

[6] Sandra Sperino. *Revitalizing State Employment Discrimination Law*, 20 Geo. Mason L. Rev. 545, 557–58 (2013) [hereinafter Sperino, Revitalizing]

[7] *Id.* at 560

[8] Del. Code tit. 6, § 4501 (2019); Iowa Code § 216.18(1) (2019); Wash. Rev. Code § 49.60.020 (2018); W. Va. Code Ann. § 5-11-15 (LexisNexis 2019); Wis. Stat. § 111.31(3) (2019); N.Y.C., N.Y., Admin. Code § 8-130(a) (2019)

[9] *Haskenhoff v. Homeland Energy Sols., LLC*, 897 N.W.2d 553, 608 (Iowa 2017) (Appel, J., concurring in part and dissenting in part)

Despite the frequent assertion that most state employment discrimination statutes were derived from federal statutes such as Title VII,[10] half of them had fair employment statutes at the time of Title VII's enactment.[11] Although the Model Anti-discrimination Act uses the same "*because of*" language as Title VII to describe practices it prohibits, at least one state supreme court[12] has noted that portions of the state employment discrimination statute were modeled after the Model Act—rather than Title VII—in declining to follow federal Title VII doctrine.[13] Actually, some state statutes bear a variety of resemblance to Title VII and federal employment discrimination policy.

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[10] Long, supra note 23, at 524–25 (claiming that state employment discrimination statutes were "by and large" inspired by Title VII)

[11] Andrea Catania. Seton Hall Univ. Sch. L. State Employment Discrimination Remedies and Pendent Jurisdiction Under Title VII: Access to Federal Courts, 32 Am. U. L. Rev. 777, 783 n.24 (1983)

[12] Carl Auerbach. *The 1967 Amendments to the Minnesota State Act Against Discrimination and the Uniform Law Commissioners' Model Anti-discrimination Act: A Comparative Analysis and Evaluation*, 52 Minn. L. Rev. 231, 236 (1967) ("Section 302(a)(1) of the Model Act makes it unlawful for an employer to 'fail' as well as to 'refuse' to hire 'an individual' because of race, color, religion, sex, or national origin.")

[13] *Carlson v. Independent. Sch. Dist., No. 623*, 392 N.W.2d 216, 220 (Minn. 1986). Another state supreme court has noted that its state legislature had before it both Title VII and the Model Act when it enacted its sex discrimination statute, but the parties in the case agreed that no legislative history existed regarding the origin of the state provision. See *Colo. Civil Rights Comm'n v. Travelers Ins. Co.*, 759 P.2d 1358, 1361 n.6 (Colo. 1988)(*en banc*)

B. Two extreme state statutes examples

At one extreme of the spectrum, some states explicitly indicate their subordination to the federal policy embodied in statutes like Title VII. For example, the Texas Commission on Human Rights Act (TCHRA) notes that its purpose is to "provide for the execution of the policies of federal Title VII and its subsequent amendments," as well as those "embodied in Title I of the Americans with Disabilities Act of 1990 and its subsequent amendments."[14] This language seems to militate against independent construction.[15]

On the other extreme are states showing independence from federal statutes. The New York City Human Rights Law (NYCHRL) reads thus:[16]

i. The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York state civil and human rights laws, including those laws with provisions worded comparably to provisions of this title, have been so construed.

ii. Exceptions to and exemptions from the provisions of this title shall be construed narrowly in order to maximize deterrence of discriminatory conduct.

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[14] Tex. Labor Code § 21.001(1), (3) (2017)

[15] The reality can be somewhat more complicated, however, when the state statute has itself been amended in ways *not concordant* with the development of federal law.

[16] N.Y.C., N.Y., Admin. Code § 8-130 (2019)(NYCHRL mandates broader protections than Title VII, requiring liberal construction to maximize anti-discrimination and anti-harassment remedies.)

iii. Cases that have correctly understood and analyzed the liberal construction requirement of subdivision a of this section and that have developed legal doctrines accordingly that reflect the broad and remedial purposes of this title include *Albunio v. City of New York*, 16 N.Y.3d 472 (2011), *Bennett v. Health Management Systems, Inc.*, 92 A.D.3d 29 (1st Dep't 2011), and the majority opinion in *Williams v. New York City Housing Authority*, 61 A.D.3d 62 (1st Dep't 2009))

The NYCHRL presents perhaps the strongest legislative endorsement of independent construction of a subnational statute. One of the cases cited in the statute, *Bennett v. Health Mgmt. Sys.*,[17] held that due to the broad-construction provision of the NYCHRL, a defendant seeking summary judgment must establish that no jury can find the defendant liable under the traditional *McDonnell Douglas* analysis or a mixed-motive analysis encompassing the motivating factor–causation requirement. This holding applied even though the wording of the status-based discrimination provision of NYCHRL is substantially similar to that found in Title VII.[18]

This state statute is an extreme example of why the text of state or local statutes might compel state courts to interpret state discrimination statutes in a manner that diverges from the federal case law, even though the statutory language that suggests causation—"*because of*"—is substantially the same

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[17] 936 N.Y.S.2d 112, 121 (App. Div. 2011)

[18] Compare 42 U.S.C. § 2000e-2(a) (2012), with N.Y.C., N.Y., Admin. Code § 8-107(1)(a)

language such as "*because of*". In spite of the common differences between federal, state, and local statutes, state courts often look to federal employment discrimination cases for guidance on questions of statutory interpretation, including which causation standard the statute implies. One possible reason is that federal courts are often tasked with interpreting state discrimination statutes when plaintiffs bring claims under both federal and state laws in federal court.[19] Federal courts often use similar analytical frameworks for analyzing state and federal claims brought together.[20] This cross-pollination can blur the lines between the legislative schemes.

When state courts are confronted with cases such as, e.g., *Gross*[21] and *Nassar*[22]; they often face similar constraints on their ability to develop interpretations separate from federal case law. Notably, a crucial distinction between state and federal state courts is the quantity of legislative history available.[23] More often than the federal courts, state courts have to infer legislative intent from the language of the statute itself.[24]

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[19] Sandra Sperino. *Revitalizing* ("It is often the federal courts that are interpreting state law.")

[20] *Id.* at 582 & n.255 (arguing that the common practice of using a single analysis for federal and state claims appended makes less sense given the current doctrinal fracture)

[21] *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176 (2009)

[22] *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2533 (2013)

[23] Judith S. Kaye. *State Courts at the Dawn of a New Century: Common Law Courts Reading Statutes and Constitutions*, 70 N.Y.U. L. Rev. 1, 29 (1995)

[24] *Id.* at 30.

Understanding this range of policy concerns and pragmatic constraints that influence state-court decisions is crucial prerequisite to evaluating state-court responses to, e.g., *Gross* and *Nassar*, which narrowed the causation standard for federal discrimination and retaliation claims and have prompted varied interpretive approaches in state courts. These variations reveal the importance of context-specific statutory interpretation at the state level.

C. State Courts Decide Causation Question: *Gross* and *Nassar*.

Given the tension between state autonomy and deference to federal law, it is not surprising that some state courts can sometimes be hesitant or even reticent in following federal precedent. Some have delayed deciding whether *Gross* and *Nassar* apply under state statutes.[25] Frequently, however, state courts—including state supreme courts—are deciding whether the "*but-for*" causation standard from *Gross* and *Nassar* applies to interpreting various state discrimination statutes.

1. State Courts Applying Other Heightened Causation Requirement.

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[25] *Dussault v. RRE Coach Lantern Holdings, LLC*, 86 A.3d 52, 61 n.5 (Me. 2014); *Haddad v. Wal-Mart Stores*, Inc., 914 N.E.2d 59, 77 n.27 (Mass. 2009); *O'Brien v. Telcordia Techs., Inc.*, 20 A.3d 1154, 1163 (N.J. Super. Ct. App. Div. 2011)("[W]e defer a decision on the thorny issue of the continued viability of the use of a *Price Waterhouse mixed-motive* analysis in light of the Supreme Court's decision in *Gross* in an age discrimination case instituted pursuant to the [New Jersey Law Against Discrimination].")

Following *Gross* and *Nassar*, state courts applying a heightened causation requirement have proceeded in three ways: (1) deciding the issue on independent state law precedent and noting the congruence with recent Supreme Court cases as dicta; (2) establishing congruence with federal law as a precedential principle that outweighs state law precedent on the correct standard; or (3) automatically applying the federal standards without justification.

i. Whether to decide the Issue on Independent State Law Precedent.

State courts might independently decide that the state law dictates the same result as the federal case law.

Perhaps the clearest example is Asbury *University v. Powell*,[26] in which the Supreme Court of Kentucky held that a "*but-for*" causation standard applied to a retaliation claim under the Kentucky Civil Rights Act.

ii. Whether to Establish Congruence with Federal Law as a Precedential Principle.

The primary reason state courts adopt the reasoning of *Gross* and *Nassar* is that the case law has established some principle or practice of following analogous federal decisions, e.g., the Supreme Court of Florida authorized a new set of standard jury instructions in civil cases.[27]

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[26] 486 S.W.3d 246, 256 (Ky. 2016)

[27] *In re: Standard Jury Instructions in Civil Cases—* Report No. 16-01 (Standard Jury Instructions), 214 So. 3d 552, 555–57 (Fla. 2017)

iii. Automatic Application of the Federal Standards.

The Louisiana Supreme Court cited the state appellate court for the proposition that *Gross* applies to age discrimination claims under Louisiana's Age Discrimination in Employment Act.[28] The court noted that "*Louisiana courts have traditionally looked to federal case law for guidance*" in interpreting the LADEA.[29] The Louisiana Supreme Court did not conduct an analysis in applying *Gross* directly to the state statute.[30]

In 2013, the Idaho Supreme Court automatically applied the "*but-for*" requirement of *Gross* to an age discrimination claim under the Idaho Human Rights Act.[31] The state court followed its long standing tradition of applying federal law in some cases.

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[28] *Robinson v. Board of Supervisors Univ of Louisiana System*, 225 So. 3d 424, 431 (La. 2017)(citing *Eastin v. Entergy Corp.*, 42 So. 3d 1163, 1182 (La. Ct. App. 2010))

[29] *Id.* (internal quotation marks omitted)(quoting *LaBove v. Raftery*, 802 So. 2d 566, 573 (La. 2001))

[30] *Id.*

[31] *Hatheway v. Bd. of Regents of the Univ. of Idaho*, 310 P.3d 315, 323 (Idaho 2013). The court noted that "Federal law guides this Court's interpretation of the [Idaho Human Rights Act]." *Id.* at 322. The Idaho Supreme Court has treated the "guidance" of federal law as binding. See, e.g., *Ostrander v. Farm Bureau Mut. Ins. Co. of Idaho*, 851 P.2d 946, 949 (Idaho 1993)(finding that the limitation of Title VII's protections to employees applied to the Idaho Human Rights Act because of the "guidance" of federal law); see also *Bowles v. Keating*, 100 Idaho 808, 812, 606 P.2d 458(1979)(applying *McDonnell Douglas* analysis to discrimination claims arising under the IHRA)

In *Villiger v. Caterpillar, Inc.*,[32] an Illinois appellate court asserted that "*but-for*" causation was the requirement in age discrimination cases with a citation to *Gross*.

In the case of state high courts, (e.g., the Idaho Supreme Court), the role of interpreting the state statute is even more important because federal courts may certify questions of state law to the state's highest court.[33] Given that state courts are the ultimate authorities in the construction of state statutes,[34] these cases constitute an abdication of their role. State courts could separately interpret their statutes without reflexive federal borrowing to obviate collapsing the federal and state provisions into one.

2. State Courts Applying a Substantial-Motivating-Factor Standard.

Other state courts have vigorously asserted their prerogative to construe state statutes independently from case law interpreting federal analogues.

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[32] No. 3-12-0739, 2013 WL 2298474, at *3 (Ill. App. Ct. May 23, 2013). For another state decision that falls into this category, see *Termonia v. Brandywine Sch. Dist., No. N10C-12-174 ALR*, 2014 WL 1760317, at *4–5 (Del. Super. Ct. Apr. 16, 2014), aff'd, 108 A.3d 1226 (Del. 2015)

[33] Jonathan Nash. *Examining the Power of Federal Courts to Certify Questions of State Law*, 88 Cornell L. Rev. 1672, 1674 (2003)("Most state high courts now offer federal courts faced with questions of state law, as well as similarly situated state courts, the opportunity to 'certify' those questions to the state high court.")

[34] The U.S. Supreme Court cases cannot bind state authority on the construction of state statutes. *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975)

Straightforward cases include state legislatures enacting statutory language either explicitly or implicitly endorsing the *motivating-factor* standard—much in the same way that Congress did in 1991. In 2011, a Texas appellate court noted that the law was unsettled as to whether *Gross* applied to age discrimination claims under the TCHRA.[35] (*See ante* at 17). Such judicial hesitation underscores the intricacies of applying federal law standards when the state legislatures remain silent.

Less straightforward are cases in which state courts seize divergence between state statutes and federal analogues to justify departing from federal precedent. In the unreported decision of *West Virginia American Water Co. v. Nagy*,[36] the Supreme Court of West Virginia upheld a mixed-motive jury instruction in a state law age discrimination case, emphasizing that the West Virginia Human Rights Act encompasses all forms of discrimination and disparate treatment within a single omnibus statutory scheme. *Id.*

State courts may be less susceptible to criticisms where their employment discrimination statutes contain broad-construction provisions. Faced with a race and disability discrimination claim under the Alaska Human Rights Act, the Alaska Supreme Court in 2010 noted that "while we look to

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[35] *Hernandez v. Grey Wolf Drilling, L.P.*, 350 S.W.3d 281, 285 (Tex. Ct. App. 2011)

[36] No. 101229, 2011 WL 8583425, at *20 (W. Va. June 15, 2011)

federal discrimination law jurisprudence generally," Alaska's employment discrimination law was intended to be construed more broadly than its federal analogue.[37]

Another example based on differing provisions, including a liberal-construction provision, happened in California[38]. There, the Supreme Court rejected the argument that *Gross* controlled the interpretation of "*because of*" in the sex discrimination case.[39]

The point is most states have their own state-tailored anti-discrimination statutes, mirroring federal law. State–level independent construction of state statutes should be supported and even encouraged to differ from federal construction.

D. State Forum Adjudication

i. Maryland Civil Adjudication vs. Federal Civil Adjudication.

Maryland state courts evaluate whether a complaint can survive a motion to dismiss using a composite test: factual sufficiency + legal sufficiency + specificity + judicial discretion + Twiqbal-like 'plausibility'.

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[37] *Smith v. Anchorage Sch. Dist.*, 240 P.3d 834, 842 (Alaska 2010)

[38] *Harris v. City of Santa Monica*, 294 P.3d 49, 55 (Cal. 2013)

[39] *Id.* ("Our precedent has recognized, however, that '*but for*' causation is not the only possible meaning of the phrase "*because of*" in the context of an antidiscrimination statute (of California's Fair Employment and Housing Act (FEHA)"; Cal. Gov't Code § 12940(a)(2019)

The Appellate Court of Maryland requires a complaint to "plead facts comprising the cause of action...'with sufficient specificity' to survive a motion to dismiss." *Rashid Mohiuddin v. Doctors Billing & Management Solutions, Inc.*, ___ Md. App. ___ (Nov. 1, 2010). "A dismissal with prejudice is ordered in cases where the dismissal is based on an appraisal of the *legal sufficiency* of the claim." See *Mohiuddin* (*citations omitted and emphasis added*). See also *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 350 (2019)(quoting *Blackstone v. Sharma*, 461 Md. 87, 110 (2018)).

Maryland Rule 2-322(c) provides that "an amended complaint may be filed only if the court expressly grants leave to amend." The Appellate Court of Maryland reaffirmed in *Mohiuddin* that, "in the absence of the trial court granting leave to amend, plaintiff had no entitlement to amend at any time, early or late." The requirement that there be an express and unqualified grant of leave to amend within the four corners of the dismissal order is ironclad. Similarly, a dismissal for failure to state a claim is on the merits and thus, with prejudice– Maryland's automatic denial of amendment. These stringent standards effectively slam the courthouse door on pro se litigants.

Maryland's Rules starkly contrast with the Federal Rules of Civil Procedure. Rule 41(a)(1)(B) states that "*unless the notice or stipulation specifies otherwise, a dismissal is presumptively without prejudice*"—a far more lenient standard than Maryland's. Rule 15(a) states that "*leave shall be freely given when justice so requires*". This Court held that "it is was an abuse of discretion to deny a

plaintiff's motion to amend [a] complaint after dismissal for failure to state a claim." See *Foman v. Davis*, 371 U.S. 178 (1962).

Federal courts have held that courts should "address deficiencies through amendments before outright dismissals." *Goode v. Central Virginia Legal Aid Society, Inc.*, 807 F.3d 619 (4th Cir. 2015). The Second Circuit held that "dismissing a pro se complaint for failure to state a claim without granting leave to amend was an abuse of discretion". *Phillips v. Girdich*, 408 F.3d 124, 129 (2d Cir. 2005). "A failure to grant leave to amend a pleading is an abuse of discretion", as explained by the Ninth Circuit that "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000)(*en banc*).

ii. Other States' Rules vs. Federal Rules

California. *In re Farmers Ins. Exch., Coordinated Cases*, 14 Cal. 5th 1219 (2023)(Must contain facts, not conclusions). **Florida.** *Mena v. J.I. Kislak Mortgage Corp*, 276 So.3d 779 (Fla. 2019)(Did not identify comparators). **Illinois.** *McQueen v. City of Chicago*, 126853, IL (Sup Ct)(2002)(Did not allege specific adverse actions). **Louisiana**. Strict (civil law/fact). Detailed factual allegations. LA Code Civ. Proc. art. 891. **New Jersey**. *Bautista v. Panera Bread*, 242 N.J. 112 (Sup. Ct) (2020)(Failed to link termination to protected status rather than performance). **New York**. *Faison v. Smitty*, 39 N.Y.3d 1064 (2023)(Failed to allege comparators). **Ohio.** *Thomas v. Columbia*

Sussex Corp., 164 Ohio St.3d 41 (2021)(Missing key facts/too conclusory). **Texas**. *Guerra v. Regions Bank* (2023), 77 F.4th 362 (5th Cir. 2023)(applying Texas Law; Need factual details). These cases were dismissed in states claiming "notice pleading" status like the rest.[40]

The point is the Supreme Court is within its judicial prerogative and equitable jurisdiction to *minimize* procedural parochialism for claims brought under Title VII in any forum, whether federal or state.

IV. The question presented is important and recurring.

State courts are not engaged in any sort of unified discourse on the relative merits of parallel and independent construction. State legislators sometimes give little attention, if any, to federalism considerations when deciding to heed or depart from federal law in construing state statutes.

A typical example of state independence is their response to *Twombly* (2007) and *Iqbal* (2009). Only six states explicitly adopted Twiqbal's heightened 'plausibility' standard. See e.g., *Data Key Partners v. Permira Advisers LLC*, 849 N.W.2d 693, 699–701 (Wis. 2014); *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 543 (D.C. 2011); *Bean v. Cummings*, 939 A.2d 676 (Me. 2008); *Iannacchino v. Ford Motor Co.*, 888 N.E.2d 879 (Mass. 2008); *Doe v. Bd. of Regents of the Univ. of Neb.*, 788 N.W.2d 264 (Neb. 2010)and *Sisney v. Best Inc.*, 754 N.W.2d 804 (S.D. 2008).

[40] The double quote, e.g., "notice pleading" means the states claim this; the reality may be different.

The resisting states, however, silently apply Twiqbal-like *'plausibility'* in addition to their own pleading tests, effectively importing federal strictures through the back door—Maryland is a case in point. This "stealth federalization" of state procedure underscores the enduring power of this Court to reshape litigation ecosystems unwittingly.

The result has been an erosion of state procedural autonomy masked as doctrinal convergence, which in practice, yields divergent outcomes for litigants based on jurisdictional quirks. This surreptitious procedural convolution can amplify the risk of inconsistency in judgment.

Legal scholars[41] predicted that plaintiffs alleging violations of civil rights would face greater difficulty in gaining access to the courts.[42] In turn, a lack of access to the courts would result in a denial of justice.[43] Historical underpinnings show that the liberal 'notice' pleading standard was essential to proceed with civil rights claims.[44]

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[41] Stephen Burbank. *Pleading and the Dilemmas of Modern American Procedure,* 93 JUDICATURE 109, 115 (2009)(noting that the drafters of the Federal Rules rejected fact pleading because of the impossibility of distinguishing between conclusions and facts.)

[42] Benjamin Spencer. *Pleading Civil Rights Claims in the Post-Conley Era (Conley v. Gibson,* 355 U.S. 41, 43–47 (1957)), 52 HOW.L.J. 99, 161 (2008)

[43] *Id.* ("When pleading standards are tightened to a degree that makes it more difficult for people with legitimate grievances to have their claims heard, that undermines the goals of civil rights legislation...")

[44] *Access to Justice Denied: Ashcroft v. Iqbal*: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary, 111th Cong. 77-78 (2009)

The effects of *Twombly* and *Iqbal*—arguably the most consequential decisions for federal civil litigation in the last two decades—were quickly felt. *Iqbal* was cited 3,312 times in the six months after the Supreme Court's ruling.[45] Several studies reveal that the Twiqbal pleading standard has been transsubstantive.[46]

Federal Rules of Civil Procedure 8(a)(2) is different from historical pleading standards.[47] The drafters intentionally omitted any reference to facts.[46] The goal was to reduce the gatekeeping function of pleading and require only fair notice of the claim sufficient to enable a defendant to respond.[48] Fair notice requires stating some material facts; otherwise, the defendant would not know how to respond. The remedy for a defect in notice stemming from factual insufficiency is a motion for a more definitive statement under Rule 12(e), not one to dismiss.[49] This remedy alone is sufficient to combat

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[45] *Has the Supreme Court Limited Americans' Access to Courts?*: Hearing Before the S. Comm. on the Judiciary, 111th Cong. 6-7 (2009) (statement of Gregory G. Garre, Partner, Latham & Watkins LLP)(noting that mere frequency of citations does not explain how many cases would have survived under *Conley*)

[46] Stephen Burbank. *The Costs of Complexity*, 85 MICH. L. REV. 1463, 1474 (1987)("Many of the Federal Rules authorize essentially ad hoc decisions and therefore are transsubstantive in only the most trivial sense.")

[47] Scott Dodson. *Comparative Convergences in Pleading Standards*, 158 U. Pa. L. Rev. 441 (2010)

[48] Geoffrey Hazard. *From Whom No Secrets are Hid*, 76 Tex. L. Rev. 1665, 1671 (1998)

[49] Dodson, supra note 6, at 18–22

troublesomely bare complaints and hinder any progress without more substance. That much was obvious from *Conley*.[50] The motion to dismiss has become the new motion for summary judgment.[51]

But *Twombly* can be improved.[52] The standard imposes an one-size-fits-all, heightened pleading burden on all case types. This undermines access to federal justice, particularly for those with meritorious claims and fewer resources to meet its demanding requirements and assailing defenses, thereby chilling the pursuit of remedies.

In *Conley*, this Court guaranteed that civil rights claims would at least get into court[53] and later reiterated that civil rights claims enjoyed liberal notice-pleading standards.[54] The conventional wisdom surrounding *Conley* was that cases were rarely dismissed for failure to state a claim.[55]

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[50] Abrogated *Twombly* (2007).

[51] *Why the Motion to Dismiss Is Now Unconstitutional.* https://core.ac.uk/download/pdf/217211419.pdf

[52] Stephen Burbank. *Summary Judgment, Pleading, and the Future of Transsubstantive Procedure,* 43 Akron L. Rev. 1189, 1992 n.14 (2010)

[53] Benjamin Spencer. *Understanding Pleading Doctrine,* 108 MICH. L. REV. 1, 18-25 (2009) (discussing the underlying values of the pleading doctrine), note 33, at 102 But see Luke Meier, *Why Twombly Is Good Law (But Poorly Drafted) and Iqbal Will Be Overturned,* 87 IND. L.J. 709, 723-25, 731 (2012)(noting dispute of Conley's "no set of facts")

[54] *Swierkiewicz (ante* at 7*)*(noting that the pleading standard is a "liberal" one)

[55] Patricia Hatamyar. *The Tao of Pleading: Do Twombly and Iqbal Matter Empirically?,* 59 AM. U. L. REV. 553, 612-13 (2010) (discussing which circuits were more likely to grant a 12(b)(6) motion) note 26, at 562 (noting that Courts' characterizations of rarely granting 12(b)(6) motions was previously accurate but now is a gross understatement)

Procedural gatekeeping has undermined the *Conley* guarantee of at least proceeding to discovery. With *Conley*, it was clear that the pleading rules accepted the costs of false positives (i.e., meritless claims going through the pleading stage) in exchange for the benefits of broad court access and avoidance of false negatives (meritorious claims being blocked from proceeding).[56] Since *Twombly*—and even more so after *Iqbal*—that is no longer the case, especially for civil rights claims. This doctrinal replacement, from notice to plausibility, imposed greater factual scrutiny at the pleading stage, disproportionately burdening civil rights plaintiffs who often lack pre-discovery evidence.

Statistically, federal civil cases post-Twiqbal saw a 13-20% increase in dismissal rates under Rule 12(b)(6), with the largest effects observed in civil rights and employment discrimination cases.[57] Twiqbal increased dismissal rates by 30–50% in some other case types.[58] Defense firms increasingly use Twiqbal to file early motions to dismiss, forcing plaintiffs to plead with "expensive specificity."[59]

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[56] For an account of *Conley*, see Dodson, *supra* note 6, at 26–30.

[57] William Hubbard. ("*The Problem of Measuring Legal Change, with Application to Bell Atlantic v. Twombly.*")("Plaintiffs now face significantly higher barriers to surviving motions to dismiss, based on circumstantial evidence".)(2017)

[58] Jonah Gelbach. ("*Locking the Doors to Discovery? The Impact of Twombly and Iqbal on Access to Justice.*")(e.g., § 1983 civil rights claims) (2012)

[59] Stephen Burbank & Sean Farhang. "*Litigation Reform: An Institutional Approach.*"(2017)

The *Conley* standard for dismissing a complaint under Rule 12(b)(6) was whether it was "*beyond doubt*" that the plaintiff could prove "*no set of facts*" to establish relief. Such was the state of the federal pleading standard for seven decades. *Twombly* lowered the dismissal bar with subjective "plausibility" and *Iqbal* sort of "*discredited*" civil rights claims.

Iqbal's requirement that plaintiffs plead 'plausible' facts before discovery functionally erected an arbitrary barrier to enforcing civil rights, denying marginalized litigants their day in court and obstructing Congress's intent under statutes like Title VII and § 1983 to provide 'broad remedy' for discrimination claims.

This Court ought to reverse *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). The heightened pleading standard violates the Rules Enabling Act by impermissibly abridging substantive rights—contrary to *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 407 (2010), which held that Federal Rules '*must not modify any substantive right.*' *Iqbal* effectively rewrites Rule 8(a) in a way that Congress never approved.

As Justice Ginsburg warned, "...the majority's insistence on a plausibility standard that invites judicial second-guessing at the pleading stage, I fear, will lead to the dismissal of many well-pleaded complaints without ever reaching the merits. This decision misdirects district courts into evaluating the plausibility of allegations that should be fully developed through discovery." (*Iqbal*, 556 U.S. 662 (2009) at 692).

V. This case provides an excellent vehicle for reviewing the question presented.

"The framers of the constitution did contemplate that cases within the judicial cognizance of the United States not only might but would arise in the state courts, in the exercise of their ordinary jurisdiction." *Martin v. Hunter*'s *Lessee*, 14 U.S. 304, 1 Wheat. 304, 340 (1816). To secure state-court compliance with and national uniformity of federal law, the exercise of jurisdiction by state courts over cases encompassing issues of federal law is subject to two conditions: "state courts must interpret and enforce faithfully the "Supreme Law of the Land," and their decisions are subject to review by this Court." *McKesson Corp. v. Div. of Alcoholic Bevs. & Tobacco*, 496 U.S. 18, 28-29, 110 S.Ct. 2238, 2246, 110 L.Ed.2d 17, 30-31 (1990).

It is an imperative of justice and essential to the promotion of comity between state and federal judiciaries for this Court to reaffirm Congress's intent under the Supremacy Clause. As this Court held in *Howlett v. Rose*, 496 U.S. 356, 371-372 (1990), "the states may not apply procedural rules that 'discriminate against the federal right' or 'burden the exercise of the federal right in a manner inconsistent with congressional policy."

By imposing stricter pleading standards than Federal Rule 8(a) requires—thereby creating unequal enforcement regimes that obstruct access to federal rights—state courts violate the constitutional order. Uniform application of congressionally mandated procedures is indispensable to 'the constitutional order'. *Howlett*, 496 U.S. at 372.

VI. The Maryland state courts were wrong.

The Baltimore County Circuit Court required Petitioner to establish a prima facie case of discrimination at the pleading stage for the Title VII claims. Under *Swierkiewicz*, only minimal inference of discriminatory intent is needed to survive a motion to dismiss. (*See ante*, at 7.)

The court improperly applied summary judgment theories at the pleading stage, evaluating the workplace harassment claim by relying on *Causey v. Balog*, 162 F.3d 795, 801 (4th Cir. 1998)—a summary judgment case.

The court relied on *James v. Booz-Allen & Hamilton, Inc.*, 368 F.3d 371, 375–76 (4th Cir. 2004)—a summary judgment case—to assess the retaliation claim. *James* in turn had relied on *Von Gunten v. Maryland*, 243 F.3d 858 (4th Cir. 2001), a case this Court expressly cited and discredited in *Burlington Northern* (2006). The Fourth Circuit ultimately reversed course, acknowledging in Von Gunten itself that "'ultimate employment decision' is not the standard in this circuit." 243 F.3d at 865.

The county court misquoted *Burlington Northern*, asserting that this Court held "actions without a change of salary, benefits, or responsibility" cannot be materially adverse. (*See* App. B, 35a at 8.) This Court expressly rejected such a narrow formulation of retaliation claims and instead adopted a broader, contextual "dissuade-a-reasonable-worker" standard. *See id.* at 69 ("[T]he significance of any given act of retaliation will often depend upon the circumstances.").

The trial court compounded multiple errors. The Appellate Court of Maryland affirmed.

The reviewing court applied the "materially significant" test to evaluate the discrimination claim. In a self-contradictory manner, the court also cited *Muldrow* (2024) but only once; cited multiple pre-*Mulrow* Fourth Circuit precedents and no post-*Muldrow* federal case law. Although lower courts are still grappling with the contours of factual allegations sufficient to meet the low threshold for actionable Title VII discrimination, the numerous opinions reflect a commitment to comply. But this state court offered no compelling reason for its reliance on stale case law in departing from the ruling of the Supreme Court.

For the retaliation claim, the court reaffirmed the "*ultimate employment decision*" test (*See* App. 3a at 16), which was expressly abrogated by *Burlington (See ante* at 5*)*, in favor of the expansive "*dissuade-a-reasonable-worker*" test. The court resurrected the pre-*Burlington* framework and redirected all Maryland state courts to a policy against the ruling of the Supreme Court. This appeals court conflated the retaliation and discrimination doctrines by improperly grafting the "*materially significant*" harm requirement—used for discrimination claims—onto the retaliation claim, thereby, compounding the errors differently.

Most egregiously, the appellate court applied the federal "severe or pervasive" standard from *Harris* (*See ante* at 4), to evaluate the workplace harassment claim despite Maryland's General Assembly outlawing the federal test *to facilitate the*

filing of harassment claims. Md. Code Ann., State Gov't § 20-609(f)(enacted as *Md SB 450*). The court's nullification of Maryland's own legislature to impose the strictest standard–*elevating "antiquated" federal standards over state law*—denies victims the statutory protections guaranteed by Maryland.

The state courts engaged in result-oriented jurisprudence by selectively invoking federal precedent to lend their rulings unwarranted persuasiveness and credibility. This disingenuous approach enables state courts to cloak their reasoning in the guise of federal authority while undermining the uniform application of federal law and obstructing access to federal justice in the process. This erode the integrity of the federal-state judicial comity.

VII. Being wrong is not wrong. It is how the wrong happens, that is wrong.

It is axiomatic that when Congress enacts statutory entitlements, basic procedural due process protections attach. *Mathews v. Eldridge*, 424 U. S. 319, 332 (1976). Hence, it is concerning that the state courts relied on analytical approaches that the Supreme Court—the final interpreter of Congress's intent—had already abrogated. Their judicature either reflects the impact of *Twombly* (2007) and *Iqbal* (2009), which lowered the bar for dismissals, or outright rejection of binding precedents, both of which are dangerous precursors to judicial inconsistency and anarchy. Judicial defiance in the state courts is not an isolated, minor deviation, but a warning tremor—an early sign of judicial seismicity whose aftershocks are unpredictable.

DISCUSSION

Petitioner's former station with respondent was conveniently located, diagonally from the Baltimore County Circuit Court; it was sensible to file the Title VII and state–law claims there. Generally, the propinquity of the state courts to the local citizenry, along with their lack of upkeep, makes them more accessible to the average person—the common folks can approach and file suits without the hassles of federal bureaucracy. By contrast, district courts are typically located in distant areas, carry a whiff of elitism, and require form for every process—sufficient to chill the filing of pro se complaints.

Jurisdictional arbitrage is forcing plaintiffs to navigate varying procedural minefields while confronting differing thresholds for legitimate federal claims. Title VII claims should receive consistent adjudication regardless of forum.

Fourteenth Amendment Due process rights are violated when access to statutory protections hinges on judicial assessment of questions of fact, discretionary parsing of pleading technicalities, and state-idiosyncratic interpretations of federal law.

This triad of procedural distortions yields real-world consequences that amount to a geographic lottery, whereby a Title VII plaintiff in Maryland faces a Catch-22 pleading trap and dismissal for failure to allege facts locked in defendant's control, while an identical claim in Oregon would proceed. The constitutional guarantee of equal justice under federal law, at this time, continues to depend on nothing more than plaintiff's ZIP Code. This should not be allowed to stand.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

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