No. 25-823

In the

Supreme Court of the United States

William King Moss III,

Petitioner,

v.

Board of Education of the Sachem Central School District; Sachem Central School District; and Individually And In Their Official Capacities: Alex Piccirillo, Robert Scavo, Matthew Baumann, Michael J. Isernia, James Kiernan, Sabrina Pitkewicz, Sara Wottawa, Vincent Reynolds, Laura Slattery, William (Bill) Coggin, Meredith Volpe, James Mancaruso, Christopher Pelletieri, Kristin Capel-Eden, Erin Hynes, Patti Trombetta, John O'Keefe, Danielle Delorenzo, Matt Perlongo, Melissa Purga, Lori Onesto, Katie Nicosia, Joseph Borruso, Carolyn Kmiotek, Carol Karson, Andrew Larson, and Joseph Watson,

Respondents,

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

PETITION FOR WRIT OF CERTIORARI

WILLIAM KING MOSS, III
Petitioner, Pro Se
32 S. 5th Ave
Brentwood, NY 11717
631-245-3957
williamkmoss3@gmail.com

This document was written and prepared by the Petitioner without the assistance of any attorney.

QUESTIONS PRESENTED

1. Whether a federal court may dismiss a discrimination complaint at the pleading stage by crediting only the plaintiff's alternative theory of unlawful consideration—framed in response to the defendant's stated justification—while ignoring the plaintiff's primary theory of outright non-consideration based on race and unconstitutional conduct, contrary to Federal Rules and Civil Procedures §8 ("Rule 8") and this Court's precedent on alternative pleading. Rule 8(d)(3), Rule 8(e); Erickson v. Pardus, 551 U.S. 89 (2007); Gelboim v. Bank of Am., 574 U.S. 405 (2015).

2. Whether courts adjudicating Title VII, §1981, and Fourteenth Amendment claims must incorporate protective state anti-discrimination laws under 42 U.S.C. §1988 ("§1988")—such as NYSHRL §§292(19), 296(1)(h) and 300—where federal law lacks analogous rules on comparators and exceptions/exemptions or boundaries of civil service hiring standards. Hardin v. Straub, 490 U.S. 536 (1989); Chardon v. Fumero Soto, 462 U.S. 650 (1983).

3. Whether a public-school district's stated reason for rejecting a Black civil service applicant is constitutionally "legitimate" under the Equal Protection Clause and §1981 when its hiring process violated the NY Constitution's mandate that civil service appointments be based, when practicable, on

reviewable competitive examinations of merit and fitness among qualified candidates only. NY Constitution 5§6; Students for Fair Admissions, 143 S. Ct. 2141 (2023).

4. Whether a federal court may dismiss discrimination claims by disregarding unrebutted allegations of statistically exclusionary outcomes—including a documented "inexorable zero" in principal appointments and unchanging racial hiring shares—where the employer's policies occurred in a zero-sum selection context and there existed less discriminatory alternatives. Int'l Bhd. of Teamsters v. United States, 431 U.S. 324 (1977); Students for Fair Admissions, 143 S. Ct. 2141 (2023).

5. Whether under Ashcroft v. Iqbal, courts may reject a facially plausible McDonnell Douglas prima facie case of discrimination at the pleading stage based solely on the employer's unsworn justification—without drawing reasonable inferences in the plaintiff's favor, taking judicial notice of inculpatory public facts, or enforcing discovery-based rebuttal requirements, particularly in civil rights cases. Iqbal, 556 U.S. 662 (2009) (dissent); Littlejohn v. City of New York, 795 F.3d 297 (2d Cir. 2015); FRE 201; Rule 12(f).

RELATED PROCEEDINGS

New York State Supreme Court (Suffolk County)

William King Moss III v. The Board of Education of the Sachem Central School District et al, No. 602037/2022 (January 10, 2023) (order granting motion to dismiss)

William King Moss III v. Board of Education of the Sachem Central School District et al, No. 602607/2023 (March 14, 2024) (order granting motion to dismiss)

New York State Appellate Division (Second Department)

William King Moss III v. The Board of Education of the Sachem Central School District et al, No. 2023-01549 (pending)

William King Moss III v. The Board of Education of the Sachem Central School District et al, No. 2024-03094 (pending)

United States District Court (Eastern District of New York)

William King Moss III v. Board of Education of the Sachem Central School District et al, No. 22-cv-06212-JS-SIL (July 8, 2024) (order granting motion to dismiss)

United States Court of Appeals (2nd Circuit)

William King Moss III v. Board of Education of the Sachem Central School District et al, No. 24-2096 (March 28, 2025) (affirming order granting motion to dismiss)

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Cases

Statutes

Other Authorities

I. PETITION FOR WRIT OF CERTIORARI

William King Moss III ("Petitioner" and "Plaintiff") petitions the Court for a writ of certiorari to review the summary order of the United States Court of Appeals for the Second Circuit.

II. OPINIONS BELOW

The Second Circuit's summary order is unpublished and is reproduced in the Appendix as Appendix 1 at App.37–46. The opinion of the United States District Court for the Eastern District of New York is also unpublished and is reproduced in the Appendix as Appendix 2 at App.47–92.

III. JURISDICTION

The Second Circuit entered judgment on March 28, 2025. Appendix 1. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. §1254(1).

IV. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the relationship between the governing statutes collectively within New York State ("NYS") and the Sachem Central School District ("Sachem"), namely:

- The Constitution of the State of New York ("NY Constitution") 5§6, 1§6 and 1§11;
- NYS Executive Law, Article 15 ("NYSHRL") §§291, 292(19), 296, and 300;

- NYS Civil Practice Law and Rules ("CPLR") §4511;

- Sachem Board of Education Policy ("Policy") #9240;

and the relevant federal statutes and rules, namely:

- Constitution of the United States of America ("Constitution"), Fourteenth Amendment §1 ("Fourteenth Amendment");

- Title VII of the Civil Rights Act of 1964, as amended in 1991 ("Title VII");

- 42 U.S.C. §§1981, 1983, 1985, and 1988;

- Federal Rules of Civil Procedure ("Rule") §§8(d)(3), 8(e), 12(b)(6), 12(f), and 18(a).

The text of each of these provisions is contained in Appendix 3 at App.93-129.

V. INTRODUCTION

"'[D]iscrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society.'" City of Richmond v. J.A. Croson Co., 488 U.S. 469, 521 (1989) (Scalia, J., concurring in the judgment). "Title VII tolerates no racial discrimination, subtle or otherwise." *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801 (1973). The purpose of Title VII is to promote hiring on the basis of job qualifications,

rather than on the basis of race or color. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 417 (1975). In *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971), the Court emphasized that unnecessary employment practices "fair in form, but discriminatory in operation" fail under Title VII. "A statute, otherwise neutral on its face, must not be applied so as invidiously to discriminate on the basis of race." Washington v. Davis, 426 U.S. 229, 241 (1976) citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Respectfully, every court must, therefore, scrutinize with care the bases of seemingly neutral policies to ensure they are not mere pretexts cleverly masking invidious discrimination. And "arbitrary selection can never be justified by calling it classification". *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964).

For seventy years, Sachem has never hired a Black school principal. That complete absence, what this Court has called an "inexorable zero," provides compelling statistical evidence of discrimination. Teamsters v. United States, 431 U.S. 324, 342 n.23 (1977). Petitioner, a qualified Black public educator, was denied consideration for a civil service principal position while Sachem selected less qualified White candidates as interviewees—29% of whom submitted fraudulent applications and lacked statutory qualifications. At this pleading stage, the Respondents ("Defendants") admitted that Sachem subjected the Plaintiff to heightened scrutiny compared to interviewed applicants executed by all-White examiners, without adhering to the constitutional merit-based standards mandated by the NY Constitution 5§6. "[S]uch segregation is a denial of the equal protection of the laws." *Brown v. Board of Education*, 347 U.S. 483, 495 (1954).

In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), this Court held that where a plaintiff establishes a prima facie case of discrimination, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for its actions, which the plaintiff may rebut by demonstrating it is "pretext or discriminatory in its application". The framework ensures that discrimination "be exposed, not hidden," *Id.* at 805, only post discovery satisfying the "requirement that the plaintiff be afforded a full and fair opportunity to demonstrate pretext". Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 255–56 (1981). "The prima facie case under McDonnell Douglas... is an evidentiary standard, not a pleading requirement." S*wierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510 (2002). "Given that the prima facie case operates as a flexible evidentiary standard, it should not be transposed into a rigid pleading standard." Id at 512. Instead, the standard must be whether a *potential* statutory liability is not merely conceivable but is conceivably true or plausible, reasonable. "Determining whether a complaint states a plausible claim for relief will... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense," Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009), with a mind to do justice. Rule 8(e).

The Constitution imposes a duty on courts to root out discrimination "root and branch." *Green v. County School Bd. of New Kent Cty.*, 391 U.S. 430, 437–38 (1968). Where hiring criteria are applied arbitrarily or in a racially discriminatory manner, "such a system must be held invalid." *Id.* at 439. This principle applies with full force to public education employers who are "state actors for purposes of the Fourteenth Amendment." *Monell v. Dep't of Social*

Servs. of City of New York, 436 U.S. 658, 690 (1978). When public-school hiring processes ignore statutory qualifications and apply opaque and inconsistently enforced standards, they permit precisely the kind of racial preference and exclusion that our Constitution forbids. "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens." Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

Yet the courts below failed to give effect to that principle. They dismissed the petitioner's disparate treatment and impact claims despite a record of admitted statistical exclusion, failure to use race-neutral alternatives, and statutory violations without requiring Sachem to justify its use of subjective screening practices. The courts below ignored the statistical evidence of exclusion, and misapplied the comparator standard contrary to NYSHRL §296(1)(h) and case law. They failed to draw reasonable inferences in Petitioner's favor as required at the pleading stage, *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), siding, quite inexplicably, with the Respondents' inconsistent and unsupported passive-voice-only defenses.

This Court has not hesitated to intervene when public institutions ignore constitutional mandates in hiring and admissions decisions. This Court's recent decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 216–17 (2023), reaffirmed the requirement that race-based exclusions or preferences be subject to strict scrutiny. Public employers, no less than universities, must "operate in a manner that permits meaningful judicial

review." *Id.* at 220. Likewise, public schools, no different than colleges, must not segregate one group for a benefit in a "zero-sum" context because: "A benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter." *Id.* at 218. The Court should grant certiorari to reaffirm these core principles, settle questions about racial equality in public employment and the enforceability of constitutional and civil rights protections, and ensure that public-school hiring adheres to statutory and constitutional commands.

VI. STATEMENT OF THE CASE

This petition arises from the systemic and enduring exclusion of Black applicants from school principal positions in Sachem. Petitioner, a highly qualified Black educator with grades 5-12 math teaching and K-12 supervisory certifications and experience, was unlawfully denied lawful consideration for the position of Hiawatha Elementary School Principal, a liberty interest in the pursuit of happiness. Sachem instead favored Non-Black applicants for interviews, including two who were statutorily unqualified and one who was afforded an interview without a résumé review by the Cabinet, two facial racial inequalities against federal and state constitutions and laws and district policy imperatives. This case presents compelling constitutional, statutory, and procedural issues surrounding employment opportunity and civil service appointments in NYS that merit this Court's review. The evidence within should convince this Court that Sachem's hiring procedures for school principals were not and are not legal. And because *Iqbal and Twombly* shook and derailed employment

discrimination thresholds and cases because of its often misinterpreted "plausible" term, this Court has a responsibility to set a clear definition of "plausible" in the employment discrimination context, especially what constitutes a plausible case of intentional discrimination when the McDonnell-Douglas framework is applied at the pleading stage.

A. History of Sachem's Exclusion of Black School Principals

Sachem was formed in the wake of Brown v. Board of Education, 347 U.S. 483 (1954), during a period of intensified "White flight" from urban centers like New York City. Founded in 1955, Sachem arose from the consolidation of rural Long Island schools amid growing resistance to school integration. As Black families increasingly sought equal educational opportunities, predominantly White suburban communities—including Sachem—sought to insulate their schools from desegregation mandates. Over the decades, Sachem became a powerful example of de facto educational segregation, not just in student demographics, but also in employment. In 2017, Sachem's leadership institutionalized exclusion further by formalizing an internal policy titled "Interviewing Procedures for SAA Administrators," which granted an exclusive group of long-standing Non-Black administrators, the Sachem Administrators Association ("SAA"), the power to recommend candidates for administrative roles, effectively establishing an in-group hiring pipeline/privilege currently closed to the Black race.

This exclusionary dynamic overall has had quantifiable effects. As alleged and documented in

Petitioner's complaint and corroborated by data received through Freedom of Information Law ("FOIL") requests, Sachem has never hired a Black school principal in its nearly 70-year history—an "inexorable zero" that signals entrenched discrimination. Sachem's historical hiring data show a consistently low number of Black administrators, with only one Black assistant principal and one other Black administrator employed since its inception. Facilitating Black principal exclusion, interviewees for the same principal position sought by Petitioner included multiple Non-Black applicants who were facially unqualified: two lacked the required School District Administrator ("SDA") School Building Leader ("SBL"), or School Administrator/Supervisor ("SAS") certifications; another two lacked both elementary K–5 experience and certification; and one of those, Joseph Watson ("Watson"), was advanced without undergoing the required Cabinet résumé review to which Moss was purportedly subjected according to the Defendants-Respondents. These disparities, both numerical and procedural, evidence a deliberate pattern of discrimination that undermines both the Equal Protection Clause and NY Constitution 5§6.

B. Sachem's Response

Following Petitioner's administrative complaint, Sachem and its officials defended their decision by asserting vague and unsupported reasons for his non-selection. Their narrative shifted between claiming the Petitioner was considered but rejected and asserting that the selection process excluded him for facially neutral reasons. However, no affidavit or verified declaration supported these reasons. Their

explanations contradicted Sachem's own policies and ignored statutory mandates.

. Sachem's response presented racially tinged retaliatory animus, effectively depicting the Plaintiff as an uppity nigger with textbook descriptions. Even though binding case law permits a Court to consider such a term so depicted in response to the Plaintiff's complaint as pretext, the Lower Courts "LCs" did not do so. Instead, they excused retaliatory animus against the Plaintiff on the record, a support of unlawful retaliation within courtroom walls.

The Respondents retaliated against the Plaintiff in NYS Supreme Court case number 602607/2023, a state filing of this case, by requesting sanctions in the amount of "fees and costs incurred" pursuant to Part 130-1.1 of the Uniform Rules of the Supreme Court and CPLR §8303-a. Said request demonstrated the Defendants' intent to defer the Plaintiff from filing complaints, constituted courtroom retaliation, and proved pretext. McDONNELL DOUGLAS CORP. v. GREEN, 411 U.S. 792, 804 (May 14, 1973)["Other evidence that may be relevant to any showing of pretext includes facts as to the ... [employer]'s reaction, if any, to [applicant]'s legitimate civil rights activities"].

C. Supporting Evidence

a. Sachem's Preferences for Non-Black School Principals, Non-Black Applicants, and Non-Black Examiners: The Petitioner presented extensive evidence that Sachem prefers White professionals, administrators, and principals over Black ones. Defendants admitted White female candidates lacking basic statutory qualifications were interviewed and advanced,

demonstrating favoritism based on race and sex. The Cabinet's résumé review was applied unevenly based on race. The résumé of a White applicant bypassed mandatory review stages that a Black applicant, the Petitioner, was admittedly subjected to and presumably rejected under. Sachem enlisted twenty-seven (27) White-examiners-only to conduct HR reviews, Cabinet reviews, and the three interviews in a community with over 20% Non-White residents. And according to the Petitioner, he was never considered. He was never contacted regarding his application nor informed of his rejection prior to filing a complaint, and Sachem has offered no evidence or allegation of any person's considering the Petitioner at any time. *The Petitioner's allegation that no officer or employee Defendant considered his application has remained unopposed.*

b. Sachem's Black Race Penalties: Petitioner, a certified and experienced administrator, was denied an interview while White candidates with less experience and/or fraudulent credentials were advanced. The record shows that at least one Black applicant was either systemically excluded or unduly disfavored.

c. Sachem's Rejection of Race-Neutral Alternatives: Sachem failed to implement neutral, lawful hiring mechanisms. It could have used validated examinations, state certifications, merit-based application and résumé scoring systems, independent professional evaluators, or trained stakeholders as examiners. Instead, it relied

on opaque, subjective, and inconsistently applied practices that predictably produced unconstitutional and discriminatory exclusions.

d. Sachem's Violations of Statute. The LCs erred in disregarding these well-pleaded claims.

i. Title VII/§1980's – Disparate Treatment Violation: Petitioner alleged and provided facts supporting Defendants' refusal to hire because of Plaintiff's race/color.

ii. Title VII/§1980's – Deprivation of Employment Opportunity Violation: Sachem's failure to consider the Petitioner on equal footing with Non-Black applicants deprived him of an employment opportunity based on race/color.

iii. Title VII/§1980's – Disparate Impact Violation: Sachem's unreviewable and discretionary practices produced the most severe racial disparity possible in school principal employment, an undeniable disparate impact under Title VII.

iv. Title VII/§1980's – Disparate Cutoff Scores Violation: Despite a competitive civil service context, Sachem unconstitutionally allowed statutorily unqualified White candidates to pass hiring screens while admittedly holding the Black applicant to a higher and unannounced standard.

v. NY Constitution 1§11 and Constitution Fourteenth Amendment Equal Protections

Violations: Petitioner was denied equal protection of the laws through undue favoritism and racially discriminatory treatment and/or exclusion. Particularly, Sachem's appointment process failed to comply with the constitutional mandate in NY Constitution 5§6 requiring hiring based on reviewable competitive examination among qualified applicants only and Policy 9240 that required recruiting and hiring be based on individual qualification, not relationships.

vi. NY Constitution 1§6 and Constitution Fourteenth Amendment Due Process Violations: Sachem's inconsistent application of policies and failure to fairly adjudicate Petitioner's candidacy according to constitutional and statutory mandates denied him fundamental due process. The Petitioner was separated from his liberty right to consideration and his liberty right to a hope for employment pursuant to NY Constitution 5§6 without a noticed hearing pertaining to his qualifications for employment (i.e. scheduled call or interview, letter or email with response deadline, etc).

D. Lower Courts' Rulings

a. Failure to Adjudicate Properly Joined Claims: The District Court failed to rule on all claims and theories joined in the complaint, particularly those grounded in the NY Constitution and §1988.

b. Failure to Strike an Insufficient Defense: Defendants' assistant-principal-experience justification was (1) unsupported by affidavit, (2) inconsistent with prior hiring history, (3) contradicted by non-Black interviewees without any K-5 teaching/administrative experience or teaching certifications (4) undermined by non-Black statutorily unqualified interviewees that submitted fraudulent applications, and (5) contradicted by the Defendants changing language between "experience as an Assistant Principal" and standards that the Petitioner met such as "building level experience", and "assistant principal experience" (all three collectively "AP experience"), and the job posting's "administrative experience preferred". The LCs failed to strike this defense under Rule 12(f).

c. NYSHRL Violation (Racial Retaliation): The record reflected evidence of retaliatory animus and the LCs' tolerance for racial hostility. The LCs disregarded this evidence in violation of N.Y. Exec. Law §292, §296 and §300's liberal construction mandate.

d. CPLR – Judicial Notice Violation: The appellate court refused to take judicial notice under CPLR §4511 and FRE Rule 201 of the immediately prior elementary principal appointment that directly contradicted Defendants' purported justification, thereby denying Petitioner the benefit of critical factual context.

VII. REASONS FOR GRANTING THE PETITION

A. The Court should grant certiorari to consider clarifying, modifying, distinguishing or overruling *Ashcroft v. Iqbal.*

a. *Ashcroft v. Iqbal* left unsettled a real and practical definition of "plausible" as it relates to the assignment of truth. Black's Law dictionary appropriately defines plausible as "conceivably true or successful; possibly correct or even likely; REASONABLE". The LCs exchanged merely "conceivable", which is family to "speculative" and "possible" (pontification without true facts), with conceivably true/successful/correct (believability upon true facts), an error in judgment that causes premature dismissals. This Court may reasonably expect that this confusion will continue into perpetuity without clarification. The concepts of merely conceivable, "conceivably true or false", and plausible, "conceivably true or successful" (i.e. conceivably true, period), are closely proximate and indistinguishable to an untrained, inexperienced, or inexact judiciary eye. Hiring discrimination cases are rare and complex as to confusingly and easily spawn a non-expert Court's disbelief when faced with choosing whether liability is merely conceivable (conceivably true or false, i.e. merely possible) or plausible (conceivably true, period). Even an experienced court can easily and wrongly believe that a finding of facts that support a refutable/disputable inference being

"conceivably false" precludes plausibility, when it is their *conceivably true findings alone* that satisfy plausibility at the pleading stage. The LCs focused on the presence of a "conceivably false" inference without applying any of the Complaint's factual allegations such as statistics, comparator treatment, undocumented treatment, post-complaint treatment, and the like to support the Plaintiff's inference of intentional discrimination as true. This Court should grant certiorari in order to clarify, with particularity, how a court should establish plausibility at the pleading stage, "piecemeal", identifying only when/where a claim is conceivably false or "as a whole", on the totality of the facts and circumstances alleged in the Complaint by weighing favorable conceivably true inferences against conceivably false inferences defensively proffered *or* deciding whether there exists a conceivably true favorable inference based on the discoverable/non-conclusory factual allegations within the Complaint without considering any refutable/disputable unfavorable inferences.

b. *Ashcroft v. Iqbal* left unsettled a real and practical question as to whether the "plausible" standard set for Rule 8's "short and plain statement of the claim showing that the pleader is entitled to relief" automatically creates an equivalent pleading requirement for Rule 12(b)(6)'s "failure to state a claim upon which relief can be granted". Both clauses require a statement of a claim. However, Rule 8's "showing that the pleader

is" and Rule 12's "can be" are different with a distinction. The courts below erred in applying a standard of elevation stating a claim showing entitlement to relief to a standard of simply stating a claim upon which relief can be granted, potential liability regardless of a showing of entitlement. The LCs confuse what "is" from what "can be" and those are two very different standards as a matter of law. Rule 8 was not the subject of the appeal in this case. Rule 12 was, and therefore, the motion to dismiss should not take effect on a Rule 8 standard of showing what is, when the Plaintiff made well-pleaded claims upon which relief "can be" granted. Rule 8's plausibility relates to what *is* conceivably true, the Plaintiff's entitlement. Rule 12's threshold is what reasonably *can be* true, because its legal analysis relies solely on what is assumed to be true without a persuasive or convincing *showing*. The dissent in Ashcroft, though wrong in their assessment of the "showing" persuasion required in Rule 8(a)(2), were right in sounding an alarm in citing the ruling's dissonance with Rule 12(b)(6). This Court should grant certiorari to draw a dark line between the pleading requirement of Rule 8(a)(2), a showing of entitlement, and that of Rule 12(b)(6), a statement of *potential* liability. The courts below erred in borrowing Rule 8(a)(2)'s plausibility standard into a legal analysis pursuant to Rule 12(b)(6). The District Court's denying dismissal pursuant to Rule 8 without appeal from either party, but with the Plaintiff's appeal of the Rule 12(b)(6) ruling, provides this Court with a rare opportunity to distinguish Rule 12(b)(6) from

Rule 8(a)(2) and decide upon Rule 12(b)(6) without ruling concurrently on Rule 8(a)(2) in a hiring employment discrimination context.

c. *Ashcroft v. Iqbal* has spawned significant negative consequences. Because of Iqbal, Rule 8's showing of entitlement is often wrongfully equated to Rule 12's statement of liability. It only makes sense that a complaint makes some showing of an entitlement to have any reason for the dispensation of court resources. After all, no court proceeding should be engaged "for nothing", no entitlement at all. Unfortunately, this entitlement pleading requirement has unfairly overshadowed the potential liability pleading requirement in Rule 12(b)(6). Stating a plausible claim showing that the pleader is necessarily entitled to relief, a claim that shows the Plaintiff's relevant legal/contractual rights/privileges, is squarely different from stating a claim containing defendant liability, a claim upon which relief can be granted, but not necessarily. The former requires more of the Plaintiff to survive. The latter requires more of the Defendant to dismiss. This difference has caused havoc in employment discrimination cases that rely on the fine reasoning skills of a court to fetter out unannounced intentional protected-class inequalities, without doubt the more frequent type of unlawful discrimination. This Court should grant certiorari to correctly confine plausibility to stating a claim showing the pleader's entitlement (some relevant legal or contractual right or privilege) to Rule 8 and make the distinction between Rule 8 and Rule

12 that only requires a statement that supports the Defendant's assumed potential liability, a relevant fault that "can be". For example, if a wealthy White man gets a job and finds out he got it expressly because he is White, he can sue the employer because the employer "can be" liable for violating the law, but he cannot state a claim for any relief to which he "is" entitled because he did not suffer any real impositions. In NYS though, pursuant to NYSHRL §291, he would have an entitlement because the opportunity to obtain employment without discrimination because of race/color is a civil right. However, sans a §1988 adoption, the federal entitlements of life, liberty and property are not so aggrieved to satisfy Rule 8. Herein lies the difference with a distinction between entitlement and liability in the discrimination context. Certiorari should be granted for this reason alone.

B. The Court should grant certiorari to consider whether Sachem's hiring policy and practices plausibly survive strict scrutiny.

a. Sachem plausibly penalized the Black Race. Sachem's "Interviewing Procedures for SAA Administrators" almost always and currently guarantees that a group of non-Black people will be able to officially recommend people they know for administrative positions. This racial advantage is unnecessary. A Sachem Administrators Association (SAA) member, as a current Sachem administrator, is no

different than a recently resigned/retired one, like the most recent Black guidance director. Yet, she is not afforded the same recruiting opportunity as the Non-Black administrators on staff. Installing an unnecessary benefit to members of Non-Black races, penalized the Black race in the recruitment process. Giving automatic interviews to SAA members' family friends while subjecting Black applicants to stages that preceded interviews penalized Black applicants in the hiring process. Similarly, selecting Non-Black candidates that literally appeared to have certification, but didn't and lied on their résumés, without checking the certifications on a public website and without affording the Plaintiff the same positive reading of the true statements on his résumé, deprived the Plaintiff, a fully qualified Black applicant, of the opportunity to earn one of two interview spots. Sachem plausibly penalized the Black race twice over.

b. Sachem plausibly engaged in an exclusion of the Black race from employment opportunity. In the entire record, the Defendants did not submit any evidence that any Black applicant was considered. Four years of silence on that note, considering the Plaintiff's accusation of non-consideration, strongly suggests the Defendants are unable to do so.

c. Sachem has plausibly excluded the Black race from school principal employment. The total number of Black certificated personnel has not exceeded 4 out of roughly 1000 such employees for the past 25 years or 0.4%, a number that rounds to the nearest whole of 0%. The

Plaintiff's Complaint alleged and Sachem's FOIL response mathematically showed that Sachem has never employed a Black school principal.

d. Sachem plausibly had and continues to have workable race-neutral alternatives. At the time of their decisions, the Defendants could have hired according to "individual qualification" only pursuant to Policy 9240. They could have hired according to practicable and reviewable competitive examinations of merit and fitness of qualified applicants only pursuant to NY Constitution 5§6. They did neither.

e. Sachem plausibly did not advantage members of non-Black races to correct prior discrimination. The Defendants never claimed a noble reason for excluding Black applicants such as the correction of past unlawful discrimination and its impacts.

The Court should grant certiorari because the Defendants' actions plausibly do not survive narrow scrutiny.

C. The Court should grant certiorari to consider whether Sachem's hiring policy and practices plausibly continue the segregation in school principal employment that existed prior to the passage of the Civil Rights Act of 1964.

a. Sachem has never hired a Black school principal. FOIL response documents show that

the defendants hired one Black assistant principal and one Black school building administrator. Because principals and assistant principals are school building administrators, the number of school building administrators ever hired minus the number of assistant principals ever hired is one minus one, meaning that zero (0) Black principals were hired in Sachem. Corroborating this math, Sachem did not relay any number of Black principals in their FOIL response. The 'inexorable zero' is an eloquent indication of discrimination. *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 342 n.23 (1977). Evidence of an inexorable zero alone should have sufficiently supported plausible pleading-stage inferences of unlawful discrimination.

b. Sachem created an internal policy that deputized White administrators only to recruit administrator candidates for interview. In 2017, Sachem unnecessarily created an internal policy deputizing the all-White Sachem Administrators Association to recruit and vet candidates for administrative positions—structural homogeneity that independently supports an inference of discriminatory intent, particularly when all appointed principals since 1955 have been White. The impact of that background leads to an inference of discriminatory intent. Vill. of Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252, 267–68 (1977). *Arlington Heights* recognized that when outcomes are racially homogeneous, such composition may significantly inform the

inference of intentional discrimination. 429 U.S. at 267. The intentional and unnecessary codification of a privilege to a group of Non-Black people without any consideration or codification of a similar privilege to a group containing Black people supports an inference of racial discrimination as "highly relevant" "administrative history".

c. In 2018, Sachem appointed a White male teacher without administrative experience or proper certification to be a school principal. Kevin Tougher, before he was appointed to an elementary principal position, did not have any AP experience and did not have certification to be a school principal. Such an appointment is evidence that Sachem, its Superintendent and its Board of Education (Board) did not care about whether a White male had any commonsense credentials whatsoever just two years prior to this case. The disparate treatment between the Plaintiff as an applicant and Kevin Tougher as an applicant undermines the Defendants' only AP experience defense, one already undermined by some interviewees' uncertified or lack of K-5 experience.

d. In 2020, Sachem plausibly selected a White male applicant for a screener interview for the principal position without knowing he had AP experience. The documentary and circumstantial evidence suggests that the Assistant Superintendent of Personnel directed her secretaries to give Watson an interview without knowledge of Watson's AP experience. As a result, the documentary and

circumstantial evidence support that the Defendants' attorney-offered out-from-under-oath passively stated reason for not hiring the Plaintiff is not true.

e. In 2020, Sachem policy plausibly permitted hiring based on racial stereotypes. Pursuant to its policy Sachem selected White candidates for advancement in the selection process that appeared to have the minimum qualifications, but did not, instead of a Black candidate that, to the Defendants, appeared not to have AP experience, an unannounced qualification, but possessed all the minimum qualifications promulgated by the Board. Sachem's policy of selecting candidates based on appearing to have qualifications instead of possessing the qualifications openly permits race and color discrimination to occur based on applicants' appearances and plays directly to race and color stereotypes in hiring. Under these instructions, racist administrators and examiners are free to discriminate based on race and color without reprisal. "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886).

The Court should grant certiorari because Sachem plausibly continues racial segregation in

school principal employment.

D. The Court should grant certiorari to consider whether the Lower Courts properly and lawfully adjudicated the claims within the Plaintiff's complaint and opposing papers.

a. The LCs erred by accepting as true and finally deciding on facts that the Defendants' passively alleged in unsworn attorney affirmations only. "The law is clear that an attorney's affirmation that is not based on personal knowledge of the relevant facts is to be accorded no weight on a motion for summary judgment." Dejana Indus., Inc. v. Vill. of Manorhaven, 12-CV-5140(JS)(SIL) (E.D.N.Y. Mar. 18, 2015) citing Little v. City of N.Y., 487 F. Supp. 2d 426, 433 n.2 (S.D.N.Y. 2007). The LCs relied on two attorney-only offered statements as true facts without the attorney having personal knowledge of the facts: (1) the Plaintiff was considered for the position by someone within Sachem prior to the first interviews, and (2) the Plaintiff was rejected due to his not having AP experience.

b. The LCs erred by holding the Plaintiff to an evidentiary standard to eventuate dismissal instead of a pleading standard to access discovery. *Ashcroft*, a racial discrimination case after *Twombly*, does not contain a single reference to a prima facie case of intentional discrimination nor the indirect evidence derived from the McDonnell Douglas framework, a misunderstood evidentiary standard misused and affirmed by the LCs.

Premature misapplications of McDonnell Douglas, as in this case, have caused significant confusion and wrongful dismissals. "Some confusion likely arises from the fact that the framework was not designed with summary judgment in mind. ...[T]he McDonnell Douglas framework was designed for use in a bench trial". Hittle v. City of Stockton, No. 24-427, 4 (Mar 10, 2025) (dissent). Regardless, a plaintiff "must be afforded a fair opportunity to demonstrate that [employer's] assigned reason for refusing to [employ] was a pretext or discriminatory in its application". McDONNELL DOUGLAS CORP. v. GREEN, 411 U.S. 792, 921 (May 14, 1973). "The facts necessarily will vary in Title VII cases, and the specification above of the prima facie proof required from respondent is not necessarily applicable in every respect to differing factual situations." Id at 804. The LCs' unnecessary reliance on an evidentiary standard at the pleading stage was an extreme prejudice against the Plaintiff, especially in the hiring context where the employers have an evidentiary advantage in their favor because they possess all the knowledge of and records of actors responsible for the hiring decisions and the Plaintiff possesses little, if any, such information. In this case, the record shows that Sachem purposefully kept FOIL documents from the Plaintiff for over two and a half years, from June 2021 to January 2024, no doubt to weaken the Plaintiff's pleadings. "It seems 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." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512–13 (2002). The imperative to do justice should always sway the court toward discovery to balance equities pertaining to the knowledge of the facts. Rule 8(e). "Discovery might not bear out [a Plaintiff]'s account, but he has satisfied his burden at this early stage. So we will vacate the District Court's order dismissing the matter and remand for the rest of the story to develop." John Doe v. Princeton University, 30 F.4th 335, 342 (3d Cir. 2022) "In employment discrimination cases ... it is often impossible for plaintiffs to determine what relevant information in the defendant's possession is discoverable. Consequently, the Court must facilitate discovery to permit plaintiffs to collect evidence that employers control." *Zubulake v. UBS Warburg*, 217 F.R.D. 309, 319 (S.D.N.Y. 2003). "Notwithstanding defendants' articulation of a potentially nondiscriminatory reason for their actions, plaintiff should be afforded a full and fair opportunity to conduct discovery in support of his allegations." Valentin v. Staten Island University Hospital, 2009 N.Y. Slip Op. 50977 (N.Y. Sup. Ct. 2009) citing Mohammad v. Board of Mgrs of 50 E 72nd St Condominium, 262 AD2d 76 [1st Dept 1999]. Easterbrooks v. Schenectady Cnty., 218 A.D.3d 969 (N.Y. App. Div. 2023); Holder v. Jacob, 2024 N.Y. Slip Op. 3864 (N.Y. App. Div. 2024) "The Federal Rules of Civil Procedure were designed to afford each party a full and fair opportunity to conduct discovery necessary for trial preparation." WINN v. ASSOCIATED PRESS, (S.D.N.Y. 1995), 903 F.

Supp. 575, 581 (Nov 1, 1995) citing Nittolo v. Brand, 96 F.R.D. 672, 676 (S.D.N.Y. 1983) (citing Cine Forty-Second St. Theatre Corp. v. Allied Artists Pictures Corp., 602 F.2d 1062 (2d Cir. 1979)).

c. The LCs erred by failing to take judicial notice of the relevant and controlling NYS constitutional provisions. Federal courts must take judicial notice of the laws of the state in which they sit. Harris v. United States, 193 U.S. 197, 198 (1904). Said notice is mandatory, not permissive. Federal judges are not free to ignore the clear implications of state law. *Sure-Tan, Inc. v. N.L.R.B.*, 467 U.S. 883, 896–97 (1984). In *Sure-Tan*, the Court reaffirmed that legal rules derived from state law—explicit or implicit—must be acknowledged by federal courts. The LCs did not take judicial notice of the NY Constitution 5§6 in order to apply legal boundaries for analyzing the defendants' *legitimate* non-discriminatory reason for rejecting the Plaintiff. By failing to take judicial notice of NYS Constitutional provisions—*e.g.*, NY Constitution 5§6's competitive examination requirement—*the LCs departed from established federal judicial doctrine.* BOARD OF REGENTS v. ROTH, 408 U.S. 564, 565 (Jun 29, 1972). Recognizing state constitutional mandates is not optional; it is a matter of judicial duty. Judicial notice of NYS laws was required and, therefore, no unconstitutional or illegal non-discriminatory reason may be accepted to rebut an inference of discrimination or retaliation nor a prima facie case therefrom formed. The LCs failed to analyze whether the Defendants' proffered AP

experience reason for the plaintiff's rejection was (1) legitimate, (2) non-discriminatory, and (3) reasonable. Applied with judicial notice of NYS laws, the Defendants' proffering was plausibly illegitimate as a matter of law due to admitted disparate consideration and/or plausibly discriminatory in its alleged application by providing employment opportunity according to *appearances* of AP experience along race and gender stereotype lines.

d. The LCs failed to apply NYSHRL where federal civil rights statutes proved incomplete. Under 42 U.S.C. §1988(a), when federal civil rights laws—such as Title VII or 42 U.S.C. §1981—do not provide "suitable remedies," courts must look to "the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil... cause is held." As the U.S. Supreme Court affirmed in *Burnett v. Grattan*, 468 U.S. 42, 47–48 (1984), §1988 requires courts to apply state law when "it is not 'inconsistent with the Constitution and laws of the United States.'" Likewise, in *Robertson v. Wegmann*, 436 U.S. 584, 588–89 (1978), the Court emphasized that where federal law is "deficient", §1988 compels the incorporation of appropriate state law. For this case, NYSHRL §292(19) expressly defines the term "discrimination" to include "separation" and "segregation". Two words that prohibit disparate treatment of applicants "because of" race/color in a zero-sum hiring context, notably *without regard to a reason why*, such as "animus". Murray v. UBS Sec., No. 22-660

(Feb. 8, 2024). NYSHRL §296(1)(h) explicitly forbids employer discrimination and retaliation without needing comparator evidence, closing that evidentiary gap present in federal law. NYSHRL §300 requires that exceptions/exemptions to remedial laws pertaining to race and color discrimination "be construed narrowly in order to maximize deterrence of discriminatory conduct". When exceptions and exemptions to NYSHRL are narrowly construed, the Defendants' undocumented, unsupported and wavering AP experience excuse does not "maximize deterrence of discriminatory conduct". It welcomes it. Likewise, Sachem's Interviewing Procedures for SAA Administrators instructs district employees to select candidates based on appearances of qualifications. This too does not "maximize deterrence of discriminatory conduct". It promotes it. By failing to apply NYS's remedial framework under §1988's mandate, the LCs not only disregarded controlling law, but deprived the Plaintiff of the full protection of civil rights intended by Congress and the Constitution. The LCs did not utilize NYSHRL where federal civil rights laws fell short.

e. The LCs violated NYSHRL by requiring a similarly situated comparator to survive a motion to dismiss at the pleading stage. It is well established that whether employees are similarly situated according to material respects is a question for a jury, not a judge. Dispute as to whether a Plaintiff has a similarly situated comparator is almost always a triable issue and question for the jury.

Certiorari should be granted to correct these Lower Court abuses of discretion and errors of law.

VIII. CONCLUSION

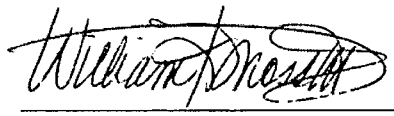
This case presents important and recurring questions about the federal courts' role in eradicating racial discrimination in public employment, the appropriate use of state law to supplement federal civil-rights protections, and the proper adjudication of Title VII and §1983 claims at the pleading stage. Despite compelling evidence (including Sachem's "inexorable zero" record of never hiring a Black principal, its opaque and inconsistently applied hiring procedures, and its failure to consider qualified Black candidates), the LCs dismissed Plaintiff's claims without discovery, accepted unsworn attorney affirmations as fact, and disregarded both federal pleading standards and controlling NYS laws.

Such outcomes conflict with this Court's longstanding precedents ensuring equal protection, requiring judicial scrutiny of discriminatory practices, and preserving access to discovery where information is controlled by defendants. Federal courts may not excuse public employers from their constitutional obligations, nor may they disregard well-pleaded allegations of incidental and systemic discrimination that, if proven, violate both state and federal law. Therefore, certiorari is warranted to reaffirm that the Constitution and civil rights laws apply fully in the context of public-school employment, that racial exclusion in hiring must be subject to meaningful judicial review, and that courts

must not insulate discriminatory practices from scrutiny by prematurely terminating litigation. The Fourteenth Amendment guarantees equal protection to all. This Highest Court should grant the petition and ensure that promise is fulfilled.

Dated: October 14, 2025
Brentwood, New York

Respectfully Submitted,



William King Moss III, Petitioner Pro Se
32 S. 5th Ave
Brentwood, NY 11717
631-245-3957
williamkmoss3@gmail.com