No. 24-269

IN THE

Supreme Court of the United States

LYDIA OLSON, *et al.*,

Petitioners,

v.

CALIFORNIA, *et al.*,

Respondents.

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

BRIEF OF OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICUS CURIAE*[1]

The Owner-Operator Independent Drivers Association ("OOIDA") is currently an appellant in *Owner-Operator Independent Drivers Association, Inc. v. Bonta, et al.*, Ninth Circuit No. 24-2341.[2] As in the instant matter, OOIDA's lawsuit raises equal protection challenges to California's worker classification law, AB 5. Unlike the instant matter, OOIDA's equal protection challenge focuses on a different industry (trucking), different sections of AB 5, and different legal arguments than those at issue here. OOIDA's claims focus on an exemption to the ABC test available to California-based trucking companies and drivers but not their interstate counterparts.[3] OOIDA files this brief in part to ensure that the Ninth Circuit's standard for reviewing motions to dismiss rational basis equal protection claims is not used by courts to avoid thorough consideration of the facts, law, and merits of plaintiffs' arguments demonstrating irrationality.

OOIDA is the largest international trade association representing the interests of independent owner-

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1. Counsel for amicus OOIDA provided timely notice to counsel of record as required by Supreme Court Rule 37.2. No counsel for a party authored this brief in whole or in part, and no such counsel made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

2. Appeal of *Cal. Trucking Ass'n v. Bonta*, No. 3:18-CV-02458-BEN-DEB, 2024 WL 1249554 (S.D. Cal. Mar. 15, 2024).

3. The district court's judgment in OOIDA's challenge preceded the Ninth Circuit's *en banc* decision at issue here.

operators, small business motor carriers, and professional truck drivers. OOIDA's more than 150,000 members are professional drivers and small businessmen and women located in all 50 states and Canada who collectively own and operate more than 200,000 individual heavy-duty trucks. Single-truck motor carriers represent nearly half of the active motor carriers operating in the United States.

OOIDA actively promotes the views of professional drivers and small business truckers through its interaction with state and federal government agencies, legislatures, courts, other trade associations, and private businesses to advance an equitable and safe environment for commercial drivers. OOIDA's mission includes the promotion and protection of the interests of independent truckers, whether they are owner-operators, small-business motor carriers, or professional truck drivers, on issues that touch on their economic well-being, their working conditions, and the safe operation of their motor vehicles on the nation's highways.

In addition to its affirmative litigation, OOIDA routinely participates as *amicus curiae* before federal Circuit Courts of Appeals and this Court to advocate for the lawful classification of drivers, the right to pursue independent owner-operator and small business motor carrier opportunities, the right to freely participate in interstate commerce, and to enforce truckers' rights in court.

OOIDA's lawsuit focuses on prong B of the ABC test, which classifies a worker as an employee unless that person "performs work that is outside the usual course of the hiring entity's business." Cal. Lab. Code § 2775(b)

(1)(B). Because motor carriers' usual course of business is moving freight, any trucker who hauls freight for a motor carrier is now considered an employee under AB 5. Thousands of truckers who operated in California before AB 5 was enacted, however, were independent owner-operators who leased their equipment and driving services to motor carriers and worked as independent contractors. AB 5 entirely eliminates this category of small business trucker, and in so doing, unconstitutionally burdens interstate commerce.

AB 5 also violates these workers' right to equal protection under the law. AB 5's business-to-business exemption exempts from the ABC test certain workers who can satisfy twelve requirements. *See* Cal. Lab. Code § 2776(a)(1)-(12). But several of these conflict with the federal rules governing the relationship between interstate motor carriers and leased owner-operators, preventing interstate trucking operations from simultaneously satisfying both laws. Thus, only intrastate California truckers, not subject to the federal rules, can possibly satisfy the business-to-business exemption.

OOIDA demonstrated that it was irrational for the legislature to make an exemption available only to the group of persons it intended the law to protect—California workers—but not persons it has little or no interest in protecting—interstate workers more likely to be from out of state. Thus, the business-to-business exemption violates the Constitution's guarantee of equal protection under the law (and unconstitutionally discriminates against interstate commerce). OOIDA submits this Brief in part to ensure that the Ninth Circuit's *en banc* decision does not invite courts to dispose of equal protection claims without

regard to the distinctions between cases like OOIDA's and Olson's and before claimants can present facts that would disprove the rationality of the proffered rational basis.

BACKGROUND

OOIDA demonstrates in its lawsuit that AB 5's business-to-business exemption violates the Constitution's Equal Protection Clause because it irrationally favors local, intrastate truckers over their similarly situated interstate counterparts. Only those California intrastate truckers who need not comply with the federal "Truth-in-Leasing Rules" can satisfy all the exemption's requirements to qualify for a more flexible classification standard, which permits leased owner-operators to operate as independent contractors.

I. The business-to-business exemption's requirements conflict with federal trucking rules applicable to interstate operations.

Workers who satisfy AB 5's business-to-business exemption's elements are classified under the *Borello*[4] standard—a classification standard less restrictive than the ABC test—under which truck drivers can drive for motor carriers as independent contractors. The business-to-business exemption's first element requires the worker to be "free from the control and direction of the contracting business entity in connection with the performance of the work, both under the contract for the performance of the work and in fact." Cal. Lab.

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4. *S.G. Borello & Sons, Inc. v. Dep't of Indus. Rel.*, 769 P.2d 399 (Cal. 1989).

Code § 2776(a)(1). The seventh element requires that the "business service provider can contract with other businesses to provide the same or similar services and maintain a clientele without restrictions from the hiring entity." Cal. Lab. Code § 2776(a)(7). The eighth element requires that "[t]he business service provider advertises and holds itself out to the public as available to provide the same or similar services." Cal. Lab. Code § 2776(a)(8).

But each of these elements conflicts with express requirements of the federal regulations applicable to truckers working in interstate commerce. Those rules (the "Truth-in-Leasing" rules authorized by 49 U.S.C. § 14102 and promulgated at 49 C.F.R. Part 376) require interstate motor carriers who engage owner-operators to have "exclusive possession, control, and use" of and "complete responsibility for the operation of" the leased owner-operator's truck. 49 C.F.R. § 376.12(c)(1). As a matter of plain language and simple logic, interstate owner-operator drivers cannot simultaneously be "free from the control and direction" of the motor carrier as necessary to qualify for AB 5's business-to-business exemption while their equipment and operation of that equipment is also under the "exclusive possession, control, and use" of their motor carrier as required by the federal rules.

Therefore, to the extent the business-to-business exemption allows leased owner-operators to be a part of the trucking industry, the exemption can only apply to California *intrastate* truckers who are not required to follow the Truth-in-Leasing rules and is unavailable to trucking operations in *interstate* commerce who must comply with the federal rules. There is no rational basis for the legislature to make an exemption available only

to the group of persons it intended the law to protect—California workers—but not persons it has little or no interest in protecting—interstate workers more likely to be from out of state.

II. The district court decided OOIDA's claims before the Ninth Circuit issued its en banc decision.

Following the *Olson* panel decision (*Olson v. California*, 62 F.4th 1206 (9th Cir. 2023) ("*Olson I*")), the district court in OOIDA's challenge permitted the plaintiffs to add claims that provisions of AB 5 (independent of the provisions at issue in *Olson*) violated the Equal Protection Clause. The court eventually conducted a bench trial on all the plaintiffs' claims in November 2023 and issued its decision rejecting the claims in March 2024, after the full Ninth Circuit granted rehearing in *Olson* but before the Ninth Circuit issued its *en banc* opinion (*Olson v. California*, 104 F.4th 66 (9th Cir. 2024) (*en banc*) ("*Olson II*")). OOIDA appealed, and the parties are currently briefing the issues in the Ninth Circuit.

SUMMARY OF THE ARGUMENT

The Ninth Circuit's *en banc* decision not only deepens a circuit divide regarding the standard for analyzing motions to dismiss equal protection claims, but it erodes the rational basis standard itself, transforming a court's review into a rubber stamp for any distinctions a government can conceive. By allowing courts to consider, in the context of a Rule 12(b)(6) motion to dismiss, hypothetical justifications premised on facts outside or contrary to the complaint, the Ninth Circuit's approach threatens to stop equal protection and due

process claimants before they have any chance to offer evidence and argument demonstrating the irrationality or impossibility of a theoretical rational basis.

If courts entertain only defendants' proffered rational bases, discounting or ignoring plaintiffs' allegations, then plaintiffs will never be able to introduce facts that disprove the proffered rational bases. This is particularly true at the motion to dismiss stage, where a plaintiff is not required to anticipate all of a defendant's arguments and allege facts to rebut those defenses. And this handicap would propagate if future courts look to *Olson II* as an invitation to examine, even at the fact-finding stage, a merely hypothetical rational basis but not the arguments and evidence proffered by the plaintiff—whether in support of their claims or as new rebuttal evidence. Theoretical rational bases are not immune from factual and legal challenges in equal protection jurisprudence, and yet that is how the Ninth Circuit's rewritten equal protection standard could be applied. *Olson II* encourages courts to ignore the reality created by legal distinctions.

As with any other claim, where plaintiffs allege plausible facts that show a violation of the Equal Protection Clause, dismissal under Rule 12(b)(6) is improper. Equal protection claims, even those implicating rational basis review, call for considered evaluation on their particular facts, not sweeping rejection of potentially meritorious claims based on a court's conception of circumstances beyond the four corners of the complaint.

Allowing courts to ignore allegations that contradict hypothetical justifications when reviewing motions to dismiss opens the door to courts similarly ignoring

evidence, during the merits stages, that a challenged law does in fact contradict and undermine its hypothetical justification. This approach significantly departs from this Court's established rational basis precedent that requires laws to be based in logic and reality.

This Court should grant the Petition and affirm that courts should apply the existing Rule 12(b)(6) standard to motions to dismiss equal protection claims, accepting plausible allegations as true and resolving inferences in favor of plaintiffs.

ARGUMENT

I. Equal protection claims subject to rational basis review are entitled to careful, individual consideration at the pleadings stage and beyond.

Economic distinctions between similarly situated persons pass equal protection scrutiny if they bear a rational relationship to a legitimate government interest or purpose. *See*, *e.g.*, *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). But a rational basis must be a logical one. *See Merrifield v. Lockyer*, 547 F.3d 978, 986 (9th Cir. 2008) ("The State is not compelled to verify *logical* assumptions with statistical evidence." (quoting *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 812 (1976))); *cf. U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973) ("For if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.").

Rational basis review may be forgiving, but it cannot be merely a rubber stamp for any distinction a government deems politically expedient. Laws that treat people differently must, at a minimum, make logical sense. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985) ("The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational.").

Equal protection claims based on economic distinctions already face an uphill battle—rational basis review affords government entities wide latitude to differentiate between like persons. But Rule 12(b)(6) does not require these allegations to clear the additional hurdles of potential defenses based on facts and circumstances outside the scope of the complaint. A complaint that plausibly alleges that the challenged legal distinction undermines the law's purposes states an equal protection claim.

A. Legal distinctions that undermine or contradict a law's claimed purpose are "irrational" for equal protection purposes.

When deciding whether a legal distinction passes rational basis review, a court must answer two questions: "(1) Does the challenged legislation have a legitimate purpose? and (2) Was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose?" *W. & S. Life Ins. Co. v. State Bd. of Equalization of California*, 451 U.S. 648, 668 (1981). If "'there is any reasonably conceivable state of facts that could provide a rational basis' for the challenged law," the claim must be rejected. *Merrifield*, 547 F.3d at 989 (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993)).

But a legal distinction that has the effect of contradicting a law's claimed, even legitimate, purposes fails rational basis review. *See*, *e.g.*, *City of Cleburne*, 473 U.S. at 446 ("The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational."); *see also*, *e.g.*, *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir. 2011) (rejecting "claimed legislative justification because the record established that the statute was not rationally related to furthering such interests"). In *City of Cleburne*, for example, the government offered multiple theoretical justifications for a local zoning decision, but the Court noted that the record revealed that none of the claimed justifications were in fact related to the disparate treatment. 473 U.S. at 448-50 ("Because in our view the record does not reveal any rational basis for believing that the Featherston home would pose any special threat to the city's legitimate interests, we affirm the judgment below insofar as it holds the ordinance invalid as applied in this case.").

Thus, the rational basis standard does not permit governments to act irrationally. *See City of Cleburne*, 473 U.S. at 446-47; *see also Merrifield*, 547 F.3d at 991 ("Needless to say, while a government need not provide a perfectly logical[] solution to regulatory problems, it cannot hope to survive *rational* basis review by resorting to irrationality.").

As Petitioners adeptly set forth in the Petition, the Circuit Courts employ one of two approaches when evaluating motions to dismiss rational basis claims: (1) accept plausible facts and draw reasonable inferences from the complaint and apply the rational basis standard;

or (2) consider any theoretical rational basis even if it would rest on facts outside of or conflicting with the facts alleged in the complaint. *See* Petition at 16-23. The Ninth Circuit followed the latter, joining the minority of circuits that have departed from this Court's motion to dismiss precedent.

B. The vacated Ninth Circuit panel opinion properly held that AB 5's treatment of app workers undermined the law's claimed purpose.

The *Olson I* panel applied the correct standard to Olson's claims that exempting workers for certain apps—like TaskRabbit and Wag!—but not other app-based workers—like those at Uber and Postmates—lacked a rational basis. Excluding these workers from AB 5 was "starkly inconsistent" with one of AB 5's chief purposes, affording gig-based workers employee rights. *See Olson I*, 62 F.4th at 1219. Moreover, the Panel could not conceive—and the State could not provide—any reason that the exempted app-based workers should be excluded from AB 5 but Uber and Postmates workers should not. *See id.* at 1219 & n.11. In short, the exemptions undermined AB 5's claimed purposes. *See id.* at 1219-20.

C. OOIDA's challenge highlights additional exemptions that contradict AB 5's claimed purposes of remedying worker misclassification in California.

OOIDA's challenge to other AB 5 provisions provides a further example of differential treatment that undermines the law's claimed purpose. AB 5 as applied to trucking treats interstate truckers differently than their intrastate

counterparts: the law features an exemption that can only ever be invoked by local, intrastate truckers, contradicting AB 5's claimed purpose of remedying misclassification of California workers. Interstate truckers, who are more likely to be based out of state and for whom the State has little or no interest in applying its employee protections, cannot satisfy the exemption. This disparate treatment exists due to the unique regulatory setting of the trucking industry.

AB 5 generally applies the demanding ABC classification test to workers in California. Cal. Lab. Code § 2775(b)(1). As applied in the interstate trucking industry, the ABC test prevents motor carriers from hiring owner-operators (many of OOIDA's members) as independent contractor drivers, because they generally work in "the usual course of the hiring entity's business." *Id.* § 2775(b)(1)(B). Relevant to OOIDA's challenge, AB 5's business-to-business exemption classifies workers under the previous, more flexible classification standard. *Id.* § 2776(a).

But when this exemption is applied to trucking, it can only ever exempt local *intrastate* workers and permit their classification under the more flexible standard. The federal Truth-in-Leasing rules—which only apply to drivers and carriers operating in *interstate* commerce, 49 U.S.C. § 13501; 49 U.S.C. § 14102—dictate a carrier-driver relationship that requires a level of control that precludes satisfaction of the business-to-business exemption. Those federal rules, however, never apply to *intrastate* operations. AB 5's claimed rationale is to combat misclassification of *California* workers through application of the ABC test. But the State has never articulated a rational basis to grant California-based

intrastate truckers an exemption to AB 5 but not grant interstate truckers—who are more likely to be based out of state and to whom California has little to no interest in applying its employment laws—the same exemption. Such differential treatment without justification is the very definition of an equal protection violation.

Thus, like Olson's allegations in this case, OOIDA highlights AB 5 carveouts that undermine and contradict AB 5's claimed rationales. Olson's and OOIDA's challenges illustrate how the equal protection standard applies on a case-by-case basis and requires careful examination of the law and facts to evaluate alleged violations.

II. The minority approach, as demonstrated by the Ninth Circuit's *en banc* decision, erodes the rational basis standard by empowering courts to ignore the challenged law's actual context.

A law fails rational basis review where its practical effects and context contradict or undermine its claimed theoretical legal justifications. *See supra* Part I.A. Laws that treat like persons differently must make sense, as the Equal Protection Clause denies states the power

> to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike."

Eisenstadt v. Baird, 405 U.S. 438, 447 (1972) (quoting *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)).

The Ninth Circuit's *en banc* decision could impact rational basis cases beyond the context of Rule 12(b)(6). *Olson II*, like the other cases following the minority approach, has the potential to deny equal protection claimants the opportunity to prove that, in fact, the challenged disparate treatment contradicts any claimed theoretical (or actual) justification and therefore fails rational basis review. The minority approach abandons the limited review of the sufficiency of the allegations of a complaint.

This Court should grant review to preserve the true 12(b)(6) standard and ensure that rational basis claimants who have sufficiently plead an equal protection violation have their day in court.

A. The Ninth Circuit's *en banc* decision allows courts to ignore plausible allegations before giving claimants the opportunity to demonstrate that a law in fact contradicts the extra-complaint justifications.

The Ninth Circuit has effectively replaced the motion to dismiss standard and its important plaintiff protections (accepting plausible factual allegations as true and resolving reasonable inferences in plaintiff's favor to decide whether the complaint states a claim) with a narrow consideration of the defendant's proffered facts supporting a theoretical rational basis. Thus, in effect, the Ninth Circuit and others using this approach have transformed decisions on Rule 12(b)(6) motions into decisions on the

merits wherein defendants have presented potential factual defenses but plaintiffs have had no opportunity to present factual rebuttals. In allowing this analysis before plaintiffs have an opportunity to prove their case and rebut any proffered rational basis, the Ninth Circuit has also rewritten the rational basis standard itself, even as applied in later stages of litigation.

Courts in the circuits following the minority approach are now invited, at any stage of litigation, to consider only the government's proffer of a rational basis divorced from the challenged law's actual context and effect. This approach denies claimants the opportunity to offer facts and arguments that may show the claimed justification to be legally or factually contradictory, illogical, or otherwise irrational. *See*, *e.g.*, *Andrews v. City of Mentor*, 11 F.4th 462, 475 (6th Cir. 2021) (rejecting potential rational basis at pleadings stage where such basis relied on facts outside the complaint); *see also Children's Seashore House v. Waldman*, 197 F.3d 654, 662 (3d Cir. 1999) (reversing Rule 12(b)(6) dismissal because potential rational bases "introduce[d] matters into the case that go far beyond the complaint and even the pleadings as a whole and introduce factual questions"); *cf.* Victor Marrero, *Mission to Dismiss: A Dismissal of Rule 12(b)(6) & the Retirement of* Twombly/Iqbal, 40 Cardozo L. Rev. 1, 22-28, 36 (2018) (statistically demonstrating abuse of Rule 12(b)(6) motions and positing that "defenses contending that the complaint fails to state sufficient grounds for relief should be adjudicated on the basis of a full evidentiary record at the summary judgment stage or at trial.").

B. This Court should grant the Petition and affirm that economic legal distinctions that contradict their claimed justifications do not survive rational basis review.

Without this Court's review and reversal of the Ninth Circuit's *en banc* decision, courts across the country will apply inconsistent standards when considering motions to dismiss claims subject to rational basis review. Some plaintiffs will face straightforward applications of this Court's Rule 12(b)(6) standards, enjoying the benefit of their allegations being accepted as true and facts not contemplated by their allegations being ignored. Others, distinguished only by their geography and now including those in the Ninth Circuit, will confront a much different test: courts in these jurisdictions will be free to consider not only hypothetical legal justifications not mentioned in the complaint, but hypothetical legal justifications premised on facts wholly outside and even contradicted by the complaint. This Court must accept review to reconcile this conflict and confirm that the approach followed by a majority of the Circuit Courts correctly applies the Rule 12(b)(6) standard to claims subject to rational basis review.

Furthermore, the Ninth Circuit's *en banc* decision threatens equal protection claims generally, eroding the already-deferential rational basis standard to one that could be used to dispose of even well-pleaded claims without consideration of claimants' ability to adduce evidence and prove a law's irrationality. Again, only this Court's review can ensure that rational basis review does not transform into a rubber stamp for every governmental attempt to differentiate between persons.

CONCLUSION

Rule 12(b)(6) does not impose additional pleading requirements on equal protection claims. Courts must accept plausible allegations as true and resolve inferences in equal protection claimants' favor. Although rebutting a rational basis equal protection claim may be a modest burden on the State, rational basis review does not present an exception to long-standing Rule 12(b)(6) standards, nor should it be allowed to deny plaintiffs the right to proffer evidence and legal arguments demonstrating a law's irrationality later in the litigation.

This Court should grant the Petition and reverse the Ninth Circuit's *en banc* decision, affirming that complaints alleging violations of the Equal Protection Clause warrant the same deference and fair evaluation under Rule 12(b)(6) as that enjoyed by any other well-pleaded claim.

Respectfully submitted,

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