No.

IN THE

Supreme Court of the United States

LYDIA OLSON, ET AL.,

Petitioners,

v.

STATE OF CALIFORNIA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

JONATHAN C. BOND
GIBSON DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036

JOSEPH E. BARAKAT
JASON MUEHLHOFF
GIBSON DUNN & CRUTCHER LLP
2001 Ross Avenue
Suite 2100
Dallas, TX 75201

THEANE D. EVANGELIS
Counsel of Record
BLAINE H. EVANSON
ALEXANDER N. HARRIS
PATRICK J. FUSTER
MIN SOO KIM
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
tevangelis@gibsondunn.com

Counsel for Petitioners

QUESTION PRESENTED

Whether a court may dismiss for failure to state a claim a constitutional challenge to a law subject to rational-basis review based on hypothetical facts not pleaded in the complaint?

PARTIES TO THE PROCEEDING

Petitioners and plaintiffs below are Lydia Olson; Miguel Perez; Postmates, LLC f/k/a Postmates, Inc.; and Uber Technologies, Inc.

Respondents and defendants below are the State of California and California Attorney General Rob Bonta.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Postmates, LLC f/k/a Postmates, Inc. is a wholly owned subsidiary of petitioner Uber Technologies, Inc., which is a publicly held corporation and not a subsidiary of any entity. Based solely on SEC filings regarding beneficial ownership of the stock of Uber Technologies, Inc., petitioners are unaware of any shareholder who beneficially owns more than 10% of Uber Technologies, Inc.'s outstanding stock.

RELATED PROCEEDINGS

United States District Court (C.D. Cal.)

Olson v. *Bonta*
No. 19-cv-10956 (July 16, 2021)

United States Court of Appeals (9th Cir.)

Olson v. *California*
No. 20-55267 (Sept. 16, 2021)
(dismissing appeal as moot)

Olson v. *California*
No. 21-55757 (June 10, 2024)
(judgment upon grant of rehearing en banc)

TABLE OF CONTENTS

TABLE OF APPENDICES

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Rules

IN THE

Supreme Court of the United States

No.

LYDIA OLSON, ET AL.,

Petitioners,

v.

STATE OF CALIFORNIA, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

Lydia Olson, Miguel Perez, Postmates, LLC, and Uber Technologies, Inc. respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's opinion upon rehearing en banc (App., *infra*, 1a-27a) is reported at 104 F.4th 66. The three-judge panel's opinion (App., *infra*, 28a-60a), vacated upon grant of rehearing en banc, is reported at 62 F.4th 1206. The district court's order dismissing petitioners' second amended complaint with prejudice (App., *infra*, 61a-84a) is not reported but is available at 2021 WL 3474015. An earlier order of the district court denying petitioners' motion for a preliminary injunction

(App., *infra*, 85a-125a) is not reported but is available at 2020 WL 905572.

JURISDICTION

The judgment of the en banc court of appeals was entered on June 10, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment states in relevant part: "No state shall * * * deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV, § 1.

Pertinent statutes are reproduced in the appendix to the petition. App., *infra*, 126a-135a.

INTRODUCTION

The pleading standard is foundational and affects almost every civil case in federal court. To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). But the courts of appeals have long been intractably divided as to whether a court can posit facts outside the complaint when the deferential rational-basis test governs a constitutional claim. The First, Third, Sixth, Seventh, and Tenth Circuits apply the ordinary pleading standard even when the plaintiff ultimately must prove her claim under the rational-basis test to win on the merits. Here, however, the Ninth Circuit joined the D.C. and Second Circuits, which depart from that settled standard by assuming facts not in the complaint–even facts that contradict the complaint's allegations—in search of a rational basis to sustain the law.

This case concerns the constitutionality of California's Assembly Bill 5 (A.B. 5). In an effort to punish network companies like Uber and Postmates, the California Legislature created a two-tier legal standard that imposed a stringent test for independent-contractor status on disfavored network companies and others, while rolling back legal protections for millions of workers from hundreds of other different professions and industries—with no rational basis for the differing treatment. Many of the industries exempted from the new legal standard were the very occupations that legislative committees identified as having a history of worker misclassification.

Petitioners are two drivers who use smartphone apps to find people seeking rides and deliveries, and the two companies that developed those apps. They challenged A.B. 5 on equal-protection grounds, asserting that the lines it draws lack any rationale apart from political favoritism and hostility. The operative 89-page complaint supports that claim with 255 paragraphs of detailed factual allegations showing that the law treats petitioners worse than similarly situated companies and workers even though network companies were prevailing against misclassification claims.

At first, the Ninth Circuit reversed the dismissal of the complaint under Rule 12(b)(6). A three-judge panel decided that petitioners had adequately pleaded a plausible equal-protection claim, crediting allegations that California law singled out petitioners for disfavored treatment based on animus rather than reason. But after granting rehearing en banc, the court of appeals changed course. It speculated that the legislature might have perceived petitioners as

substantial contributors to misclassification but exempted other businesses that the legislature believed posed lesser threats of misclassification. That factual conjecture went far beyond, and indeed directly contradicted, the complaint's express allegations—including detailed allegations that exempted industries suffered from higher rates of misclassification. Having posited facts outside (and contrary to) the complaint, the court held that the challenged classification was rationally linked to the risk of misclassification, affirmed dismissal, and prevented petitioners from attempting to prove their case with evidence.

The decision below contravenes this Court's decisions and departs from the ordinary pleading standard by positing facts outside, and even inconsistent with, the complaint. In case after case, this Court has held that Rule 8 governs all claims in federal court except when a statute or rule—like the Private Securities Litigation Reform Act or Rule 9—expressly imposes a heightened pleading standard. There is no special carveout for constitutional claims governed by rational-basis review. In such a case, as in almost any other, courts accept the truth of the complaint's allegations and tally all reasonable inferences in the plaintiff's column before deciding whether the claim plausibly pleads that the challenged law lacks a conceivable rational basis.

The 5-to-3 conflict on the interaction of the pleading standard and rational-basis review should be resolved—and resolved in favor of petitioners. At the moment, a plaintiff's ability to have his day in court on constitutional claims turns on the happenstance of geography. The Ninth Circuit's decision threatens to close the courthouse doors on a wide range of plaintiffs challenging economic and social

legislation—even those supported by plausible allegations that state legislatures and city councils have drawn irrational lines to favor political friends and hurt unpopular foes. A plaintiff who alleges facts showing an entitlement to relief should get her day in court, even when she ultimately must prove irrationality to obtain relief.

STATEMENT

A. Legal Background

1. The Federal Rules of Civil Procedure set forth the pleading standard and its enforcement mechanism. A plaintiff must make "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). And a defendant may move to dismiss the complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

This Court's decisions outline a well-established framework for applying Rules 8 and 12. A complaint need plead only "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544, 570 (2007). Courts "accept the allegations in the complaint as true." *Manhattan Community Access Corp.* v. *Halleck*, 587 U.S. 802, 806 (2019). And courts draw "reasonable inference[s]" from those facts in favor of the plaintiff. *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009). So long as these allegations and inferences "raise a right to relief above the speculative level," the complaint should "proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" *Twombly*, 550 U.S. at 556-556.

2. The central command of the Equal Protection Clause is that "all persons similarly situated should

be treated alike." *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985). Even when a protected characteristic is not at stake, the Constitution "secure[s] every person * * * against intentional and arbitrary discrimination." *Village of Willowbrook* v. *Olech*, 528 U.S. 562, 564 (2000) (per curiam).

The guarantee of at least a rational basis for legislation has long been part of the constitutional order. A few decades after the Fourteenth Amendment's ratification, this Court held that the equal protection of law means that legislative classifications "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily," including with respect to corporations. *Gulf, Colorado & Santa Fe Railway Co.* v. *Ellis*, 165 U.S. 150, 155 (1897). The Court applies much the same rational-basis standard today: Legislative classifications must "rationally advanc[e] a reasonable and identifiable governmental objective." *Schweiker* v. *Wilson*, 450 U.S. 221, 235 (1981). Although rational-basis review is deferential, it is not "toothless." *Mathews* v. *Lucas*, 427 U.S. 495, 510 (1976).

Some justifications—like animus—are illegitimate bases to draw lines singling out persons for worse treatment. See *Kotch* v. *Board of River Port Pilot Comm'rs for Port of New Orleans*, 330 U.S. 552, 556 (1947). In *Department of Agriculture* v. *Moreno*, 413 U.S. 528 (1973), for example, this Court held that a statute restricting food stamps was not rationally related to any legitimate justification, and the only objective that could explain the classification—a desire "to prevent so-called 'hippies' * * * from participating in the food stamp program"—could not withstand

constitutional challenge. *Id.* at 534. The Court explained that, "if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare [legislative] desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." *Id.* at 534. The Court in *Cleburne* reiterated that the Equal Protection Clause forbids legislative classifications that can be explained only by "negative attitudes" or "'[p]rivate biases'"—there, against the mentally disabled. 473 U.S. at 448.

Even if animus is the actual motivation for a challenged classification, courts still can hypothesize legitimate governmental objectives. This Court has explained that "those attacking the rationality of the legislative classifications have the burden 'to negative every conceivable basis which might support it.'" *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 315 (1993) (citation omitted). So the governmental interest can be artificial, and it is "irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *Ibid.*

But although courts can hypothesize justifications for a law, those justifications must be tethered to the complaint's allegations or factual record. In *Romer* v. *Evans*, 517 U.S. 620 (1996), for example, a state constitutional amendment that denied gay and lesbian individuals the protection of antidiscrimination laws failed the rational-basis test because the State's proffered justifications—safeguarding religious liberties and "conserving resources to fight discrimination against other groups"—were (although legitimate in theory) "divorced from [the] factual context" of the challenged provision. *Id.* at 635. And in *Cleburne*, the

Court held that disparate treatment of the mentally disabled was irrational because "the record d[id] not reveal any rational basis for believing that the [group] would pose any special threat to the city's legitimate interests." 473 U.S. at 448. Thus, even under "rational basis review," courts must determine whether the challenged "policy is plausibly related to the" asserted justification, and plaintiffs may present "extrinsic evidence" to show that the policy cannot "reasonably be understood to result from [that] justification." *Trump* v. *Hawaii*, 585 U.S. 667, 704-705 (2018).

3. California long followed variants of the traditional common-law rule for classifying workers as independent contractors. *S.G. Borello & Sons, Inc.* v. *Dep't of Industrial Relations*, 769 P.2d 399, 403-407 (1989). Under that rule, the "principal measure" of employee status is the supposed employer's ability to "control the details of the service activities." *Id.* at 403 (brackets and citation omitted). In *Dynamex Operations West, Inc.* v. *Superior Court*, 416 P.3d 1 (2018), however, the California Supreme Court adopted a new standard—colloquially known as the "ABC test"—for purposes of certain minimum-wage laws. *Id.* at 39-40. That test presumes that workers are employees unless (A) "the worker is free from the control and direction of the hirer," (B) "the worker performs work that is outside the usual course of the hiring entity's business," *and* (C) "the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed." *Id.* at 34.

In 2019, the California Legislature responded to *Dynamex* with the stated intent to prevent the "misclassification of workers as independent contractors"

by codifying the decision and extending it beyond enforcement of certain minimum-wage laws to the entirety of the California Labor Code and Unemployment Insurance Code. A.B. 5, ch. 296, § 1, 2019 Cal. Stats. 2890. But rather than simply codify *Dynamex* as the law for all workers, A.B. 5 *rolled back* the ABC test for many occupations, reverting thousands of workers to the pre-*Dynamex* common-law standard set forth in *Borello* that the legislature otherwise deemed insufficient to prevent misclassification. § 2(b)-(h), 2019 Cal. Stats. 2891-2896 (formerly codified at Cal. Lab. Code § 2750.3); see § 1(e), 2019 Cal. Stats. 2890 (criticizing *Borello* for denying "basic workplace rights" to "potentially several million workers"). The legislature soon followed with another bill exempting even more occupations from the ABC test, spanning more than 12 pages of statute rolls. A.B. 2257, ch. 38, § 2, 2020 Cal. Stats. 1838-1850 (Cal. Lab. Code §§ 2776-2784).

These exemptions in A.B. 5 and later A.B. 2257 were made widely available upon request, including to industries that historically had misclassified workers. To streamline the lobbying process, the bill's sponsor even devised a one-page form that business groups could complete to request an exemption. Second Am. Compl. ¶ 83 (D. Ct. Doc. 81) ("Compl.").

Among those who successfully sought an exemption were newspaper distributors and carriers—even though (as the legislature found) this industry has a long history of misclassifying workers. Compl. ¶ 81. A.B. 5's sponsor accepted exempting those businesses as "a condition of AB5's passage," despite recognizing that "newspapers ha[d] lost nearly every case brought by carriers under *Borello*" and that exempting the newspaper industry would lead to the "continue[d]

misclassif[ication]" of "historically misclassified" workers. *Ibid.* The legislature also exempted workers in many "growth industries," such as the janitorial and hospitality industries, which its own bill analysis specifically flagged as having "some of the *highest* misclassification rates" in the economy. *Id.* ¶ 59 (emphasis added; citation omitted).

There was, however, one category of businesses—network companies such as Uber and Postmates—that was singled out and denied any chance of an exemption. The complaint alleges in detail how A.B. 5's sponsor repeatedly disparaged Uber and other network companies and vowed that they would never receive an exemption. Compl. ¶ 89 (stating that an exemption for network companies was "'not going to happen'"); *id.* ¶ 92 (considering exemptions "only if there was no way that '*Uber* will [be able to] just say' it might fall within them"); see *id.* ¶ 13 (Assembly Speaker calling "the gig economy 'f—g feudalism, all over again'").

Following A.B. 5's enactment, the sponsor "publicly 'ask[ed] the 4 big [California] City Attorneys offices to file for injunctive relief on 1/1/20,'" the law's effective date. Compl. ¶ 56. The California Attorney General soon accepted that invitation. In June 2020, the Attorney General filed suit against Uber in California court. The suit sought an injunction against Uber's business model under A.B. 5's ABC rule. *People* v. *Uber Technologies, Inc.*, 56 Cal. App. 5th 266, 281 (2020).

B. Procedural History

1. Two days before A.B. 5 took effect, petitioners filed this action against California and its Attorney General challenging A.B. 5 under the federal Constitution and seeking declaratory and injunctive relief.

App., *infra*, 14a. Petitioners contended (as relevant) that A.B. 5 deprives them of equal protection of law because the system of exemptions arbitrarily singles out petitioners for disfavored treatment. *Ibid.*

Petitioners also moved for a preliminary injunction barring enforcement of A.B. 5 against them pending this litigation. App., *infra*, 14a. In February 2020, the district court denied the motion. *Id.* at 85a-125a. Among other reasons, the court found that petitioners' asserted irreparable injury was "speculative," *id.* at 117a, explaining at a hearing that it believed "[f]ood delivery for Uber Eats and Postmates would likely fall under" A.B. 5's exemption for referral agencies, D. Ct. Doc. 63, at 9:5-7; see also App., *infra*, 108a.

Within five months of the district court's ruling, the California legislature amended the referral-agency exemption the court had cited—with retroactive effect—specifically to *exclude* "delivery, courier, [or] transportation" services from that exemption. A.B. 2257, § 2, 2020 Cal. Stats. 1840 (Cal. Lab. Code § 2777(b)(2)(C)). At the same time, the legislature extended the exemption to cover most *other* referral agencies. *Id.* § 2777(b)(2)(B); see Compl. ¶ 102. As a result of that amendment, network companies including petitioners Uber and Postmates could not rely on the referral-agency exemption, including in the Attorney General's state-court enforcement action. As the California Court of Appeal later recognized in that case, the 2020 amendment left "little doubt" that the legislature had "targeted" network companies. *Uber*, 56 Cal. App. 5th at 297 & n.18.

In November 2020, California voters approved by large margins Proposition 22, which rejected A.B. 5 as to app-based drivers. Cal. Bus. & Prof. Code § 7451. Proposition 22 criticized A.B. 5's threat "to take away

the flexible work opportunities of hundreds of thousands of Californians, potentially forcing them into set shifts and mandatory hours, taking away their ability to make their own decisions about the jobs they take and the hours they work." *Id.* § 7449(d). The California Supreme Court recently upheld the voters' authority to override A.B. 5. *Castellanos* v. *State*, 552 P.3d 406, 418 (Cal. 2024).

After the election, petitioners amended their complaint to discuss how Proposition 22 strengthened their claim that A.B. 5's treatment of app-based drivers and network companies is irrational. Compl. ¶¶ 125-135. California's ongoing enforcement efforts despite the voters' passage of Proposition 22, they alleged, irrationally seek "to nullify the People's will" and underscore that only animus, not any legitimate justification, could explain why the legislature and respondents jointly came after petitioners like a heat-seeking missile. *Id.* ¶ 125.

2. The district court dismissed petitioners' second amended complaint. App., *infra*, 61a-84a. Based partly on the court's "own rational perceptions of the basis for the law," the court found A.B. 5 to have been "motivated by a legitimate interest" in preventing misclassification. *Id.* at 73a. The court reasoned that petitioners had not plausibly alleged that they "are so similarly situated to exempted workers that the Legislature's failure to exempt [them] is irrational or arbitrary." *Id.* at 65a. For example, the court asserted that "the transportation industry has historically experienced misclassification of drivers" and asserted (directly contradicting the complaint's allegations) that exempted entities had "not engendered any comparable misclassification lawsuits." *Id.* at 71a-72a.

3. A three-judge panel of the Ninth Circuit reversed the dismissal of petitioners' complaint. App., *infra*, 28a-60a. Unlike the district court, the panel concluded that petitioners had adequately alleged that their deliberate "exclusion" from the system of exemptions was plausibly "attributed to animus rather than reason." *Id.* at 52a. It reasoned that those allegations, taken at face value, established that A.B. 5's exemptions were "starkly inconsistent with the bill's stated purpose" and irrationally classified "nearly identical" companies—such as TaskRabbit and Wag!, which also offer apps that match people seeking services with people seeking to provide them—differently from petitioners. *Id.* at 51a-52a. In the panel's view, those allegations "plausibly state a claim that the 'singling out' of [petitioners] effectuated by A.B. 5, as amended, 'fails to meet the relatively easy standard of rational basis review.'" *Id.* at 53a (citation omitted).

4. The Ninth Circuit granted rehearing en banc, vacated the panel decision, and affirmed the dismissal. App., *infra*, 1a-27a. The en banc court recognized that determining whether comparators are similarly situated is "a fact-specific inquiry." *Id.* at 19a. And it was willing to credit allegations that petitioners were "similarly situated to" exempted entities, such as "Wag! and TaskRabbit." *Ibid.* But the court held that dismissal was warranted because the court could conceive of ways in which the referral-agency exemption might be rationally related to the law's "stated purpose" of "protecting workers, stemming the erosion of the middle class, and reducing income inequality." *Id.* at 21a.

In reaching this conclusion, the Ninth Circuit went beyond the allegations in petitioners' complaint in

search of hypothetical facts that could justify this disparate treatment of similarly situated parties. The court posited that the legislature could have reasonably perceived Uber as a "more substantial contributo[r] to the problem of misclassification," "the pioneer of the on-demand app-based business model," and an "origin" of misclassification—even if that perception was not "supported by 'evidence or empirical data.'" App., *infra*, 21a-22a (citation omitted). The court further suggested that the legislature may have viewed exempted industries as "pos[ing] a diminished risk of misclassification." *Id.* at 26a.

The Ninth Circuit did not identify any allegations in the complaint supporting its factual claims. Nor did the court address petitioners' contrary allegations that they had not contributed at all to misclassification and that exempted entities had long histories of misclassification. See Compl. ¶¶ 11, 59, 61, 62, 68, 81. In the court's view, its hypothetical facts about what the legislative might have believed made out "'plausible reasons'" for the law and were sufficient to resolve the case at the motion-to-dismiss stage. App., *infra*, 27a.

REASONS FOR GRANTING THE PETITION

The circuits have struggled to apply the pleading standard consistently and coherently to constitutional claims that are governed by the rational-basis test. Without direct guidance from this Court, lower courts have described the intersection of the pleading and rational-basis standards as "perplexing," *Wroblewski* v. *City of Washburn*, 965 F.2d 452, 459 (7th Cir. 1992), a "dilemma," *Giarratano* v. *Johnson*, 521 F.3d 298, 303 (4th Cir. 2008), and "complicate[d]," *Brown* v. *Zavaras*, 63 F.3d 967, 971 (10th Cir. 1995).

This complex question has predictably led to warring camps on the question presented. The First, Third,

Sixth, Seventh, and Tenth Circuits have properly limited their review at the pleading stage to the complaint's factual allegations for claims governed by rational-basis review. But the Second and D.C. Circuits have posited facts outside the complaint and even contradicted well-pleaded facts to divine a rational basis for the government action, thereby short-circuiting the discovery process. The Ninth Circuit joined the latter camp and entrenched a 5-3 split in rejecting petitioners' equal-protection claim on the pleadings.

The minority view that the Ninth Circuit adopted here cannot be reconciled with the pleading standard. Rule 8 requires a court ruling on a motion to dismiss to focus on the well-pleaded allegations in the complaint and accept those alleged facts (and reasonable inferences from them) as true—not to posit hypothetical facts the plaintiff never pleaded, let alone facts that contradict the complaint. In the context of rational-basis review, a court may sustain a challenged law based on a rationale the legislature did not subjectively embrace, but Rule 8 requires the court to evaluate whether a hypothetical basis for the law is rational in light of the facts pleaded in the complaint—not imaginary facts or facts that the complaint's allegations refute. The Ninth Circuit improperly evaluated the plausibility of backfilled-in-litigation justifications for A.B. 5 in the abstract, untethered to the factual landscape defined by the complaint. That misguided approach of evaluating asserted rationales in a vacuum enabled the court of appeals to reject petitioners' equal-protection challenge at the pleading stage without confronting the complaint's detailed factual allegations that undermine each of those after-the-fact rationales.

If the decision below is allowed to stand, the court of appeals' reasoning will ensure that most rational-basis claims will be dead on arrival in the country's largest Circuit. Virtually any law can be sustained with sufficient ingenuity and imagination if courts can venture beyond the four corners of a complaint to posit additional facts that are fictional or even conflict with the plaintiff's allegations. Rational-basis review is deferential, but it should litigated under the established standards of civil procedure. The standard for determining whether a constitutional challenge to a state or federal law should survive the pleading stage should not vary across circuit boundaries. The Court should grant review to resolve the conflict on this important and recurring question.

I. The Decision Below Deepens A Circuit Conflict Over Whether A Court May Posit Facts Outside The Complaint To Supply A Rational Basis For A Challenged Law

Courts have candidly struggled to reconcile the pleading standard and rational-basis test. As a leading case from the Seventh Circuit explains, the solution is to accept the procedural limitations of Rules 8 and 12 in identifying the relevant facts, and then to apply the substantive standard of the rational-basis test to those resulting facts. Five circuits adhere to that sound approach. But three circuits, including the Ninth Circuit here, have drifted from hypothesizing a rational basis for a law to hypothesizing facts that could support that basis. This circuit split is ripe for resolution by this Court.

A. The Seventh Circuit addressed the question presented head-on in *Wroblewski*. Although initially "perplex[ed]" by the apparent collision of the "rational basis standard" with the pleading standard, the court

recognized that the "rational basis standard, of course, cannot defeat the plaintiff's benefit of the broad Rule 12(b)(6) standard." 965 F.2d at 459. Any tension dissipates, the court explained, once one recognizes that Rule 12(b)(6) "is *procedural*, and simply allows the plaintiff to progress beyond the pleadings and obtain discovery, while the rational basis standard is the *substantive* burden that the plaintiff will ultimately have to meet to prevail on an equal protection claim." *Id.* at 459-460 (emphases added). Putting those together, the Seventh Circuit explained that courts therefore "must take as true all of the complaint's allegations and reasonable inferences that follow" and then apply the rational-basis test to *those* "resulting 'facts.'" *Id.* at 460.

Four other circuits have followed the Seventh Circuit's lead in refusing to posit facts outside the complaint to dismiss claims governed by the rational-basis test. See, *e.g.*, *Andrews* v. *City of Mentor*, 11 F.4th 462, 477-478 (6th Cir. 2021); *Dias* v. *City & County of Denver*, 567 F.3d 1169, 1183-1184 (10th Cir. 2009); *SBT Holdings, LLC* v. *Town of Westminster*, 547 F.3d 28, 35 (1st Cir. 2008); *Children's Seashore House* v. *Waldman*, 197 F.3d 654, 662 (3d Cir. 1999). These courts limit their analysis of possible justifications for a law to the facts alleged in the complaint. They certainly do not hypothesize facts that contradict the allegations, and instead fill any gaps by drawing inferences for (not *against*) the plaintiffs.

1. The circuits in the majority camp hold that, even though courts can hypothesize justifications for a law, they cannot invent *facts* to support those hypothetical justifications but must evaluate the challenged measure based on the facts alleged in the complaint.

In *Wroblewski*, for example, the Seventh Circuit ultimately affirmed dismissal because the rational basis was "directly supported by the allegations in the complaint." 965 F.2d at 460. But when the complaint's allegations do *not* provide a factual basis for "different treatment," the Seventh Circuit has refused to go beyond the complaint to make "factual assessments," and the plaintiff has an opportunity to prove her claim. *May* v. *Sheahan*, 226 F.3d 876, 882 (7th Cir. 2000).

The Sixth Circuit also has rejected a "fact-intensive inquiry" beyond the complaint's four corners as "ill-suited to the pleadings stage" even for claims governed by the rational-basis test. *Andrews*, 11 F.4th at 475 n.3. In *Andrews*, the panel divided over the pleading standard, with the majority citing *Wroblewski* and holding that the plaintiff need only "plead facts that plausibly negate the defendant's 'likely non-discriminatory reasons' for the disparate treatment"; a higher standard, it explained, would foreclose even "those few-and-far-between cases where the defendant's conduct truly lacks a rational basis." *Id.* at 477-478; see *id.* at 480-481 (Larsen, J., dissenting in relevant part). *Andrews* accords with earlier decisions of the Sixth Circuit holding that district courts erred in going beyond the complaint for factual support for a rational basis and depriving plaintiffs of their "'shot at additional factual development, which is what discovery is designed to give [them].'" *Davis* v. *Prison Health Services*, 679 F.3d 433, 439-440 (6th Cir. 2012).

The First Circuit likewise has rejected the existence of a "heightened pleading standard" for constitutional claims governed by the rational-basis test. *SBT*, 547 F.3d at 34. In *SBT*, condo developers alleged that similarly situated condo owners were irrationally

exempted from burdensome environmental regulations. *Id.* at 35. The defendant, relying on asserted facts outside the complaint, argued that the exemptions were rational because the plaintiffs had different legal obligations than the exempted condo owners and because "the property remained in the same state" for the owners from the time of purchase. *Ibid.* The First Circuit reversed the dismissal, refusing to speculate because "the complaint does not disclose any facts that would have served as a rational basis for the difference in treatment." *Id.* at 34.

The Third Circuit, too, has been forceful that the complaint supplies the facts that in turn limit what can support a rational basis for a motion to dismiss. In *Children's Seashore House*, the court reversed the dismissal of an equal-protection claim because the defendant's arguments went "far beyond the complaint and even the pleadings as a whole and introduce[d] factual questions which [the court] cannot address at this time." 197 F.3d at 662. And in *Ecotone Farm LLC* v. *Ward*, 639 F. App'x 118 (3d Cir. 2016), the court again allowed an equal-protection claim to proceed, stressing that a "rational basis [wa]s not apparent from the complaint" and that no more was required "at the pleadings stage." *Id.* at 124.

2. As a corollary, the courts on this side of the split refuse to accept factual assertions that contradict the complaint's allegations. See, *e.g.*, *Davis*, 679 F.3d at 439 (refusing to credit "contested statements" outside the complaint over the plaintiff's allegations); *Dias*, 567 F.3d at 1183-1184; *May*, 226 F.3d at 882 (refusing to assess whether inmates presented different "security concerns" when plaintiff alleged that they were similarly situated in that regard). And they draw inferences in favor of, not against, the plaintiffs.

The Tenth Circuit's decision in *Dias* is illustrative. There, dog owners challenged a Denver ordinance banning pit bulls within city limits as a denial of due process. 567 F.3d at 1172. The court of appeals reversed the dismissal of the complaint, noting that courts "must" take "the factual allegations in the light most favorable to the plaintiffs" in deciding whether "the complaint plausibly alleges that the [law] is not rationally related to a legitimate government interest." *Id.* at 1183. The court rejected Denver's contention that its "Ordinance [wa]s rational as a matter of law," explaining that the plaintiffs had alleged facts concerning the characteristics of pit bulls that, if true, would show that pit-bull bans "are no longer rational." *Ibid.* The Tenth Circuit observed that, "at the 12(b)(6) stage," it "ha[d] no occasion to pass upon the ultimate merit of plaintiffs' * * * challenge" to Denver's law or speculate "[w]hether the plaintiffs can marshal enough evidence" to prove their allegations. *Id.* at 1184. The court was instead "constrained to deciding if the complaint alleges facts sufficient to state a claim for relief." *Ibid.* And "[c]rediting the allegations in the complaint," as Rule 8 requires, the court "could not conclude at th[at] early stage" that the challenged law "was rational as a matter of law." *Ibid.*

Far from positing hypothetical facts that contradict the plaintiffs' allegations, circuits in the majority "dra[w] all inferences * * * in the light most *favorable* to the plaintiffs." *Dias*, 567 F.3d at 1184 (emphasis added). In *Dias*, for example, the Tenth Circuit refused to "dra[w] factual inferences against the plaintiffs" in evaluating the sources the plaintiffs had cited concerning pit bulls, but instead gave the plaintiffs the benefit of the doubt in considering whether their complaint stated a plausible claim. *Ibid.* And in

SBT, the First Circuit held that the defendant's attempt to go outside the complaint "ignore[d] the rule that we draw all rational inferences from the facts alleged in favor of the plaintiffs." 547 F.3d at 35.

B. In contrast, three circuits, including the en banc Ninth Circuit here, have upheld government actions on the pleadings by latching onto potential rational bases that rest on facts outside—or even contrary to—the complaint's factual allegations.

The D.C. Circuit has held that the rational-basis standard displaces the ordinary principle that courts are limited to the complaint's factual allegations at the pleading stage. In *Hettinga* v. *United States*, 677 F.3d 471 (D.C. Cir. 2012) (per curiam), the plaintiffs challenged a law regulating milk markets as economic protectionism and argued that, had the district court "accept[ed] their well-pled facts as true," the disparate treatment would have been irrational at the pleading stage. *Id.* at 479. The D.C. Circuit upheld the complaint's dismissal, reasoning that the plaintiffs' invocation of the ordinary pleading standard had "misstate[d] the relevant legal standard," which it understood to allow courts to hypothesize any "'conceivable state of facts that could provide a rational basis for the classification'" even at the pleading stage and even when the plaintiffs had alleged otherwise. *Ibid.* (citation omitted); accord *Sanchez* v. *Office of State Superintendent of Education*, 45 F.4th 388, 396 (D.C. Cir. 2022).

The Second Circuit also has used rational-basis review as a license to depart from the ordinary pleading standard. In *Progressive Credit Union* v. *City of New York,* 889 F.3d 40 (2d Cir. 2018), taxicab drivers challenged disparate regulations of for-hire vehicles

(that use services like Uber) and "alleged that no material differences now exist between a traditional street hail and an e-hail." *Id.* at 46; see *id.* at 48-49. The court of appeals hypothesized facts outside the complaint, including that the rider typically has "no prior relationship with the taxi company or driver," to conclude that a rational basis for treating for-hire services differently did exist. *Id.* at 50. Although there were strong reasons to believe that the taxicab industry would not be able to prove ultimately that they were similarly situated, a court following the *Wroblewski* approach would not have been able to skip ahead to that conclusion on a motion to dismiss.

The Ninth Circuit in this case followed the path marked by those circuits that go outside the complaint's allegations in search of facts to support hypothetical rationales for a challenged law. The court of appeals theorized that the California legislature might have "perceived" petitioners as "more substantial contributors to the problem of misclassification than referral agencies engaged in other services." App., *infra*, 20a-21a. But the critical factual premise of that supposition is found nowhere in the complaint. To the contrary, it directly contradicts petitioners' well-pleaded allegations. Petitioners alleged in detail that their industry was not misclassifying workers and that exempted industries were rife with misclassification. See pp. 9-10, *supra*.

In the circuits following the majority approach articulated in *Wroblewski*, this case would therefore have turned out differently. Those courts would not have upheld A.B. 5 on the pleadings as a rational response to differential rates of misclassification because "the complaint does not disclose any facts that

would have served as a rational basis for the difference in treatment." *SBT*, 547 F.3d at 34. They instead would have "[c]redit[ed] the allegations in the complaint," *Dias*, 567 F.3d at 1184, and refused to elevate "contested" facts outside the complaint over petitioners' allegations that exempted industries had higher rates of misclassification, *Davis*, 679 F.3d at 439. And to the extent that any inferences could properly fill gaps in the complaint's factual allegations, they would have drawn any such inferences for—not against—petitioners. *Dias*, 567 F.3d at 1184.

In short, the Ninth Circuit broke with numerous other circuits in requiring courts to hypothesize "'any reasonably conceivable state of facts that could provide a rational basis for the classification'" on a motion to dismiss, even when those conceivable, hypothetical facts *contradict* the complaint's actual allegations. App., *infra*, 20a (citation omitted).

II. The Ninth Circuit's Decision Conflicts With This Court's Decisions

A. In embracing the minority approach, the decision below also departed from this Court's precedent. The Court's decisions establish two propositions that, together, foreclose the Ninth Circuit's reasoning in this case. First, under Rule 8, courts at the pleading stage cannot go beyond the complaint, but must instead take plaintiffs' factual allegations as true and draw all reasonable inferences in their favor under Rule 12(b)(6). Second, the same pleading standard applies across the board unless a statute or rule expressly exempts the type of claim. No such exemption exists for constitutional claims governed by the rational-basis test.

1. This Court's decisions provide simple but critical guideposts for applying the pleading standard.

That standard requires only "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), and courts ask only whether the complaint "state[s] a claim upon which relief can be granted," Fed. R. Civ. P. 12(b)(6). Courts "accept the allegations in the complaint as true." *Manhattan Community Access Corp.* v. *Halleck*, 587 U.S. 802, 806 (2019). Courts draw "reasonable inference[s]" from those facts in favor of the plaintiff. *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009). The plaintiff of course must allege enough "factual content to 'nudg[e]' his claim * * * 'across the line from conceivable to plausible.'" *Id.* at 683 (citation omitted). But if the complaint pleads "enough facts to state a claim to relief that is plausible on its face," the parties move forward into discovery that tests those facts. *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544, 570 (2007).

This Court showcased how to apply the pleading standard just a few months ago. In *National Rifle Association of America* v. *Vullo*, 602 U.S. 175 (2024), the Court reversed the dismissal of the NRA's claim that a New York official had coerced insurers to stop doing business with the NRA because of its gun-promotion advocacy. *Id.* at 194-195. The Court explained that its review was limited to the "well-pleaded factual allegations" and that the defendant could not go beyond the complaint to supply facts to support an alternative explanation—there, that New York was pursuing insurance violations rather than singling out the NRA—especially when those facts conflicted with the complaint's "allegations of coercion." *Id.* at 195. As the Court reiterated, Rule 12(b)(6) creates an "obligation to draw reasonable inferences in the [plaintiff's] favor and consider the allegations as a whole." *Ibid.*

2. This Court's decisions also establish that the ordinary pleading standard applies to constitutional claims governed by rational-basis review. On four occasions, this Court has rejected attempts to carve out a category of claims from Rule 8. *Johnson* v. *City of Shelby*, 574 U.S. 10, 11 (2014) (per curiam) (constitutional claims); *Iqbal*, 556 U.S. at 684 (antitrust claims); *Swierzkiewicz* v. *Sorema N.A.*, 534 U.S. 506, 512-513 (2002) (employment-discrimination claims); *Leatherman* v. *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168 (1993) (municipal liability under § 1983). Rule 8 "governs the pleading standard 'in all civil actions.'" *Iqbal*, 556 U.S. at 684 (quoting Fed. R. Civ. P. 1). And this Court, citing the *expressio unius* canon, "has declined to extend" the "limited exceptions" to Rule 8 beyond their express scope, such as Rule 9(b)'s heightened standard for allegations of fraud and mistake. *Swierzkiewicz*, 534 U.S. at 513; see, *e.g.*, *Tellabs, Inc.* v. *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 321 (2007) (discussing the "heightened pleading instructions" of the Private Securities Litigation Reform Act).

Claims whose substance is governed by rational-basis review are no exception to the default pleading standard of Rule 8. Nothing in Rule 8 or any other provision like Rule 9 excludes them from the ordinary pleading standards. So those ordinary principles apply here, as in *Iqbal* and *Swierzkiewicz*.

Precedent confirms that straightforward conclusion. This Court has long limited its review in applying the rational-basis standard at the pleading stage to the four corners of the complaint. For example, in *Village of Willowbrook* v. *Olech*, 528 U.S. 562 (2000)

(per curiam), the Court treated a classification's irrationality as a *factual* question—not a legal one—to be determined by the complaint's allegations. The plaintiff there alleged that the Village of Willowbrook had conditioned connecting her property to the municipal water supply on the grant of a 33-foot easement, while it required only a 15-foot easement from her neighbors. *Id.* at 563. The Seventh Circuit affirmed dismissal of the complaint, but this Court summarily reversed. The "complaint," it held "c[ould] fairly be construed as alleging" differential treatment between the plaintiff and "other similarly situated property owners" that was "'irrational and wholly arbitrary.'" *Id.* at 565. "These allegations," the Court explained, were "sufficient to state a claim for relief under traditional equal protection analysis." *Ibid.* Although a jury ultimately found facts to support a rational basis at trial, *Olech* v. *Village of Willowbrook*, No. 1:97-cv-4935 (N.D. Ill. Nov. 4, 2002), that conclusion could not be reached at the pleading stage.

Earlier decisions are in accord. In *Polk Co.* v. *Glover*, 305 U.S. 5 (1938) (per curiam), for example, the Court reversed the dismissal of an equal-protection claim against economic legislation and admonished that a district court "was confined to the bill [of complaint] and was not at liberty to consider the affidavits or the other evidence" submitted with a motion for a preliminary injunction because the allegations about industry practice "can hardly be said to lie within the range of judicial notice." *Id.* at 9-10; see *id.* at 13 (Black, J., dissenting) (advancing contrary position that "legislative finding" should be conclusive at motion-to-dismiss stage). And in *Borden's Farm Products Co.* v. *Baldwin*, 293 U.S. 194 (1934), the Court stressed that a

"plaintiff is entitled to have the case heard and decided with appropriate findings by the trial court, unless it satisfactorily appears, upon facts of common knowledge or otherwise plainly subject to judicial notice, that the provision should be sustained as resting upon a rational basis." *Id.* at 204. Both decisions refused to go beyond the complaint, even when applying the rational-basis standard.

Limiting the factual analysis to the complaint respects the rational-basis standard while maintaining the proper sequence of litigation. Courts must determine whether a proffered justification for a law, even if rational in the abstract, is "plausibly related" to the challenged law or policy. *Trump* v. *Hawaii*, 585 U.S. 667, 705 (2018). A court cannot sustain a law based on a rationale that is "divorced from [the] factual context." *Romer* v. *Evans*, 517 U.S. 620, 635 (1996). And the relevant factual context varies with successive stages of litigation. A plaintiff bears the burden of establishing the elements of her claim "with the manner and degree of evidence required at the successive stages of the litigation," from the pleading stage to summary judgment to trial. *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 561 (1992). When seeking a preliminary injunction, for example, plaintiffs may present "extrinsic evidence" to show that a challenged law cannot "reasonably be understood to result from a justification" that the defendant or court proffers. *Hawaii*, 585 U.S. at 705. But at the pleading stage, the factual context is confined to the complaint's allegations (and any incontestable facts properly subject to judicial notice).

If courts applying rational-basis review at the motion-to-dismiss stage could simply surmise that additional facts *must* have existed that justify the lines drawn by the challenged law, litigation would be asymmetrical. A defendant and the court could always imagine new facts untethered from the complaint (or even from reality), but the plaintiff would be limited to the complaint's allegations. That asymmetry does not exist for Article III standing (under *Defenders of Wildlife*) or other types of constitutional claims (as in *Vullo*). And it should not exist for rational-basis review.

B. The Ninth Circuit got this Court's plausibility standard backward. It affirmed the dismissal of petitioners' complaint on the theory that "[t]here are plausible reasons for treating transportation and delivery referral companies differently from other types of referral companies." App., *infra*, 8a. Its analysis bucked the proper review of the complaint under *Twombly* and *Iqbal* in two related ways.

1. In shifting its focus from the plausibility of petitioners' equal-protection claim to the plausibility of respondents' made-for-litigation justification in the abstract, the Ninth Circuit went beyond the complaint in hypothesizing facts in support of potential legitimate justifications. It speculated that, even if petitioners are similarly situated to exempted companies and workers, "the legislature perceived Uber, Postmates, and other transportation and delivery services as more substantial contributors to the problem of misclassification than referral agencies engaged in other services." App., *infra*, 19a-21a. And it suggested that the "legislature may have perceived Uber as the pioneer of the on-demand app-based business

model" that was the "origin" of a "problem of misclassification." *Id.* at 22a. But whether the risk of misclassification was worse for app-based drivers is a quintessential factual question. And the court never suggested that comparative rates of misclassification are a proper subject of judicial notice. *Id.* at 22a-24a; see *Polk Co.*, 305 U.S. at 9-10. Like the other courts on its side of the circuit split, the court of appeals was wrong to posit hypothetical facts answering those questions at the pleading stage.

2. Worse, the Ninth Circuit refused to take petitioners' allegations as true. The complaint does not merely contain a "formulaic recitation of the elements" of a rational-basis claim: that petitioners were similarly situated to exempted entities and that the differential treatment lacks a rational basis. *Iqbal*, 556 U.S. at 681 (citation omitted). Instead, petitioners alleged in fine-grained factual detail over 89 pages that their services were *not* more substantial contributors to misclassification—in fact, courts "already had concluded that app-based drivers are independent contractors, not employees," before A.B. 5. Compl. ¶ 61. Petitioners further alleged that many industries that California did exempt had a demonstrated track record of misclassifying—including for newspaper carriers, house cleaners, fishers, and construction and hospitality workers. *E.g.*, *id.* ¶¶ 11, 59, 68, 80-81. As the three-judge panel recognized, accepting the complaint's allegations as true, there is "no indication that many of the workers in exempted categories, including those working for the app-based gig companies that are exempted, are less susceptible to being 'exploited by being misclassified as independent contractors.'" App., *infra*, 52a (citation omitted).

In contrast, the en banc court of appeals hypothesized that the legislature might have viewed petitioners as an "origin" for the "problem of misclassification" and exempted entities as "pos[ing] a diminished risk of misclassification." App., *infra*, 22a, 26a. But the factual premise of that imagined rationale is nowhere in the complaint; in fact, it directly contradicts the complaint's allegations. The Ninth Circuit thus improperly refused to "accept the allegations in the complaint as true," *Halleck*, 587 U.S. at 806, as required for rational-basis review no less than any other claim, *e.g.*, *Olech*, 528 U.S. at 565.

To the extent that the court of appeals could draw inferences to fill any gaps in the complaint, it drew them in the wrong direction against petitioners—the same mistake that led this Court to vacate and remand the judgment in *Vullo*. 602 U.S. at 195. The ultimate question in this case will be whether petitioners can prove that A.B. 5 does not "rationally advanc[e] a reasonable and identifiable governmental objective." *Schweiker* v. *Wilson*, 450 U.S. 221, 235 (1981). But at the pleading stage, the question is a more modest one: whether the complaint's allegations, if one spots petitioners every reasonable inference, push petitioners' claims past the plausibility threshold. *Iqbal*, 556 U.S. at 678. Yet the court of appeals did the opposite, inferring that the legislature must have viewed industries it did not exempt as posing a greater risk of misclassifications from the mere fact that it did not exempt them. App., *infra*, 25a-26a.

In reaching that conclusion, the en banc court also refused to draw logical, reasonable inferences in petitioners' favor. When petitioners moved for a preliminary injunction against A.B. 5, the district court denied

that motion in part because it anticipated that petitioners could qualify for the exemption for referral agencies. D. Ct. Doc. 63, at 9:5-7. After that ruling, the legislature promptly enacted new legislation, A.B. 2257, to exclude petitioners from that exemption, thus preventing them from claiming an exemption on the same terms as other services that refer workers to potential jobs. Compl. ¶ 110; see p. 11, *supra*. As the three-judge panel recognized, one very plausible inference from that targeted exclusion is that petitioners' treatment could be explained only by an illegitimate interest: "animus rather than reason." App., *infra*, 52a. But the en banc court strained to find a contrary inference, speculating that the legislature might have had a permissible purpose in mind because the amendment also excluded additional industries besides petitioners. *Id.* at 24a.

At the pleading stage, which inference may ultimately prove more accurate is immaterial. The court's role is to draw reasonable inferences favoring the plaintiff—not to fill any perceived factual gaps with inferences favoring the defendant.

* * *

The en banc panel's reasoning effectively flipped *Twombly* and *Iqbal* on their heads. The court went beyond the complaint. It even contradicted the factual allegations of the complaint. And it drew factual inferences against petitioners even though reasonable inferences favored the claim of irrational treatment. Nothing gives courts a special license to ignore and invent facts in such a cavalier fashion at the pleading stage in cases involving the rational-basis test.

III. The Question Presented Is Important And Recurring

The question presented has weighty implications for the rule of law and the ability of citizens to keep arbitrary government actions in check. If courts can not only rely on hypothetical governmental justifications, but also posit fictional or even counterfactual premises that contradict the complaint's allegations, rational-basis review will have become the "toothless" standard that this Court has disavowed. *Mathews* v. *Lucas*, 427 U.S. 495, 510 (1976). The Court should grant review and repudiate that misguided approach to reviewing laws for a rational basis.

The Ninth Circuit's rule creates a self-fulfilling prophecy that could doom nearly any rational-basis claim from the get-go. A deferential standard like rational-basis review creates an understandable temptation to skip ahead to the end of the story. Courts expect that most legislatures have rational reasons for their actions. But the whole point of judicial review is to smoke out the aberrational law that lacks any rational basis and rests on, for example, animus. Without the complaint's allegations setting the playing field on a motion to dismiss, the plaintiff will never have an opportunity to disprove the presumption of rationality. If courts are not confined to the facts in the complaint, but can posit hypothetical justifications that would be rational if any number of imaginary, never-pleaded facts were true, courts will nearly always sustain challenged laws. In place of the constraints on courts' role as arbiter in the crucible of adversarial testing, courts in cases governed by rational-basis review would face no limits but their own creativity.

The proceedings below illustrate the dangers. A.B. 5 is a once-in-a-decade statute, with an unusually irrational exemption scheme, sponsored by a particularly vindictive group of legislators. See p. 10, *supra*. And the treatment of petitioners—being carved out from the exemption for referral agencies just as the district court recognized that they were poised to claim its benefits—underscores that they were singled out, as the three-judge panel noted. App., *infra*, 52a.

Yet the Ninth Circuit hypothesized both a justification for A.B. 5's irrational classifications and facts in support of that hypothetical justification. Again, it held that the legislature could have "perceived" petitioners "as more substantial contributors to the problem of misclassification," App., *infra*, 21a—despite the complaint's well-pleaded allegations that they had not contributed to misclassification and that exempted entities were inveterate misclassifiers, see Compl. ¶¶ 11, 59, 61, 62, 68, 81. If a plaintiff is not permitted past the pleadings in *these* circumstances, the Constitution will no longer act as a check on truly irrational laws.

If courts could dismiss cases at the pleading stage based on imagined facts, seminal rational-basis cases never would have reached this Court. This Court decided *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432 (1985), after a bench trial showed that the zoning ordinance lacked any rational basis for excluding homes for the mentally disabled. See *Cleburne Living Center, Inc.* v. *Cleburne*, 726 F.2d 191, 194 (5th Cir. 1984). This Court also decided *Department of Agriculture* v. *Moreno*, 413 U.S. 528 (1973), after the plaintiffs had presented evidence that the food-stamp restriction could be explained only by animus against hippies. See *Moreno* v. *Dep't of Agriculture*, 345 F. Supp.

310, 312, 314 & n.11 (D.D.C. 1972). But under the Ninth Circuit's decision, those plaintiffs would have lost on the pleadings without having had the chance to build a winning record because the courts could have hypothesized "'any reasonably conceivable state of facts'"—for example, that more public resources would be expended on homes for the mentally disabled in *Cleburne*, or that fraud might be committed more often outside family units than inside them in *Moreno*. App., *infra*, 20a (citation omitted).

The courts of appeals likewise have addressed many rational-basis claims only after factual development of a trial record has proved the challenged classification to be discriminatory. In *Craigmiles* v. *Giles*, 312 F.3d 220 (6th Cir. 2002), for example, the Sixth Circuit held that a regulation requiring a license to sell a casket lacked a rational basis on the trial record and could be explained only be "economic protectionism." *Id.* at 224 (citation omitted). And in *St. Joseph Abbey* v. *Castille*, 712 F.3d 215 (5th Cir. 2013), the Fifth Circuit concluded that a similar law was irrational "on the record compiled by the district court at trial." *Id.* at 223. Plaintiffs should not have to surmount a higher burden to survive a pleadings challenge than to prove their claims at summary judgment or trial.

* * *

"Every generation or so a case comes along when this Court needs to say enough is enough" for an irrational legislative classification. *Armour* v. *Indianapolis*, 566 U.S. 673, 693 (2012) (Roberts, C.J., dissenting). All petitioners seek is a chance to prove that this is such a case. Their complaint laid out factual allegations that refuted each conceivable justification at

the pleading stage. The Ninth Circuit erred in treating rational-basis review as a license to invent new facts, cast aside the complaint's allegations, and draw inferences against petitioners.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

JONATHAN C. BOND
GIBSON DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036

JOSEPH E. BARAKAT
JASON MUEHLHOFF
GIBSON DUNN & CRUTCHER LLP
2001 Ross Avenue
Suite 2100
Dallas, TX 75201

THEANE D. EVANGELIS
Counsel of Record
BLAINE H. EVANSON
ALEXANDER N. HARRIS
PATRICK J. FUSTER
MIN SOO KIM
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
tevangelis@gibsondunn.com

Counsel for Petitioners

September 6, 2024