NO. 24-_____

In the Supreme Court of the United States

JEREMY MORRIS, ET UX.,

Petitioners,

v.

WEST HAYDEN ESTATES FIRST ADDITION HOMEOWNERS ASSOCIATION,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

> We are somewhat hesitant to bring up the fact that some of our residents are non-Christians (avowed atheists) or people of another faith and we don't even want to think of the problems that would bring up.
>
> - West Hayden Estates Homeowners' Association Certified Letter to Morris family

West Hayden Estates Homeowners' Association sent a certified letter to homebuyers Jeremy and Kristy Morris about their planned Christmas display after they were under contract to buy a home, but before closing. The letter was sent after Mr. Morris informed the HOA he had a Christian ministry at his house: a 2-hour, 5-night per year Christmas fundraiser for children with cancer. After a 6-day trial in Idaho Federal District Court and 15 hours of deliberations, a jury unanimously found the HOA violated 42 U.S.C. § 3617, § 3604b, and § 3604c of the Fair Housing Act. Five months later, the judge flipped the verdict under Rule 50(b) despite a certified letter, a tape recorded confession, and testimony that the HOA President told the sellers that the HOA was "not want[ing] the Morris family to push their religious beliefs on others in the neighborhood." (App.22a; App.70a).

The questions presented for review are:

1. Whether the 9th Circuit erred by interpreting Rule 50(b) of the Federal Rules of Civil Procedure to permit a judge to overturn a jury verdict based on weighing evidence and the credibility of witnesses, thereby infringing on the Seventh Amendment right to a jury trial in civil cases in federal court.

2. Whether Rule 50 should be narrowly construed to limit judicial interference with a jury verdict in an action brought under 42 U.S.C. § 3604(b) § 3604(c) and § 3617 of the 1968 Fair Housing Act in accordance with the standard set out by this Court in *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000) despite the 9th Circuit's opinion that even a tape recorded admission of discrimination and a certified letter targeting religious homebuyers sent on the basis of Petitioner's "beliefs" were insufficient for a unanimous jury to withstand Rule 50b.

3. Whether the 9th Circuit should have restored the Plaintiffs' jury award rather than offering the Plaintiffs a new trial in their concurrence that a jury could have found that the Respondent created a hostile environment under 42 U.S.C. § 3617.

PARTIES TO THE PROCEEDINGS

Petitioners and Plaintiffs-Appellants below

- Petitioners are Jeremy Morris and Kristy Morris, a married couple. (Unless otherwise indicated, Petitioners are referred to collectively herein as "the Morrises" or "the Morris family.")

Respondent and Defendant-Appellee below

- Respondent is the West Hayden Estates First Addition Homeowners Association. (Unless otherwise indicated, Respondent is referred to collectively herein as "the HOA" or "West Hayden Estates.")

LIST OF PROCEEDINGS

U.S. District Court, District of Idaho

No. 2:17-cv-00018-BLW

Jeremy Morris et ux., *Plaintiffs/Counter-Defendants* v. W. Hayden Estates First Addition Homeowners Ass'n, Inc., *Defendant-Counter Claimant*

Rule 50(b) decision vacating verdict: April 4, 2019

U.S. Court of Appeals for the Ninth Circuit

No. 19-35390

Jeremy Morris et ux., *Plaintiffs-Appellants* v. W. Hayden Estates First Addition Homeowners Ass'n, Inc., *Defendant-Appellee.*

Opinion: June 17, 2024

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

OTHER DOCUMENT

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

CONSTITUTIONAL PROVISIONS

STATUTES

JUDICIAL RULES

REGULATIONS

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Ninth Circuit, dated June 17, 2024, is reproduced in the Appendix at App.1a. This Opinion has been designated for publication. Memorandum Decision and Order of the District for the District of Idaho dated April 4, 2019, which vacated the jury verdict under Fed. R. Civ. P. 50(b) is reproduced at App.107a, 109a. The Jury Verdict in favor the Petitioners, the Morrises, is included at App.150a.

JURISDICTION

The Ninth Circuit issued its decision on June 17, 2024. Justice Kagan granted an application for extension to file this petition through November 14, 2024. (No. 24A265). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The Ninth Circuit had jurisdiction pursuant to 28 U.S.C. § 1291. U.S. District Court for the District of Idaho had jurisdiction pursuant to 28 U.S.C. § 1331.

CONSTITUTIONAL PROVISIONS AND PROCEDURAL RULES INVOLVED

U.S. Const. Amend. VII

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Fed. R. Civ. P. 50(b)

> (b) RENEWING THE MOTION AFTER TRIAL; ALTERNATIVE MOTION FOR A NEW TRIAL. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may:
>
> (1) allow judgment on the verdict, if the jury returned a verdict;
>
> (2) order a new trial; or
>
> (3) direct the entry of judgment as a matter of law.

STATEMENT OF THE CASE

Jeremy and Kristy Morris, evangelical Christians, brought suit against the West Hayden Estates HOA alleging religious discrimination under the Fair Housing Act. The complaint alleged the HOA was motivated by religious animus, including, but not limited to:

1) writing a discriminatory letter referencing non-Christians (avowed atheists) in the neighborhood while the Morrises were under contract to buy a house.

2) the HOA President admitting on a recording, "Yes, we discriminated against you."

3) the HOA contacting the sellers about not wanting the Morris family's beliefs pressed on others in the neighborhood.

4) death threats which were videotaped.

5) intimidation by circulating letters to neighbors before the Morrises moved in and continuing to circulate letters by hand in violation of the rules.

6) vandalism to the Morris family's Christmas display which was photographed and reported to police.

7) selective enforcement of the CCRs by admitting to neighbors and on tape recordings that alleged Morris-family violations did not actually exist, while Board Members openly violated CCRs with impunity.

8) Assaulting numerous female visitors to the Morrises' Christmas fundraiser, while mothers were present with their children.

9) Attempting to stage a fake accident by repeatedly moving a snowblower toward buses carrying visitors simulating an injury, while an HOA Board Member filmed from a drainage ditch.

Following a trial in Idaho federal court, the jury was unanimous on all four claims in favor of Jeremy and Kristy Morris, finding that West Hayden Estates HOA engaged in religious discrimination and violated three provisions of the Fair Housing Act. The Idaho District Court, however, granted West Hayden Estates HOA's motion for judgment as a matter of law under Rule 50(b), overturning the jury's verdict. The court reasons that witnesses were not credible and the evidence was insufficient for a finding of religious discrimination.

The 9th Circuit Court of Appeals Affirmed in Part and Reversed in Part. A majority affirmed that the Idaho District Court's decision that a jury could not have found the writing was discriminatory under § 3604(c) or that the HOA had engaged in discrimination before and after the sale of the home in violation of § 3604(b). The Ninth Circuit reversed on the issue of 42 U.S.C. § 3617, finding that a jury could have found the HOA created a hostile environment for the Morris family. The Petitioners now seek for this Court to affirm the original jury verdict and reject the 9th Circuit's Rule 50(b) interpretation.

I. Factual Background

A. Morris Family Makes Offer On Home; Homeowners Association Informed of Christian Ministry.

Jeremy and Kristy Morris raised money for children with cancer during their 5-day, 2-hour Christmas program at their home in Hayden, Idaho. The fundraiser included a live rented camel that never spent a night on the property and closely-monitored by its camel-owner, a singing choir from a local high school, hundreds of thousands of Christmas Lights, and 6 buses that ferried people to-and-fro from a nearby park so as to avoid potential congestion.

The Morrises purchased a home in a rural area of the county and located a subdivision adjacent to 600 acres of undeveloped horse pasture. The home was in an HOA. Multiple attorneys instructed the Morrises there would be no potential violation of the CCRs to have the Christmas program at that location. Mr. Morris, also an attorney, made an offer on the home and reached out to the HOA President to collaborate ideas to make the fundraiser a success in the neighborhood.[1] Mr. Morris and HOA President Jennifer Scott discussed the religious nature of the event such as candy canes with Christian messages that would be distributed by Santa Claus, telling the story of the creation of the candy cane and how the colors represented the blood of Christ, the purity of Jesus, and the shape as a Shepard's staff. "Jeremy

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[1] "[Mr. Morris] reviewed a copy of the West Hayden Estates CC&Rs, and concluded that they would not prohibit such a Christmas program." (App.65a).

also explained to Scott the religious motivation behind the event."[2] Judge Collins summarizes how the Morrises came to the decision of how to incorporate Christian elements at the Morris family's Christmas program at their previous home: "After speaking with his pastor, Jeremy "came away with an impression that, rather than doing like a massive preachy thing," he should start with 'little Christian elements' and add 'more and more every year.' . . . They also organized the singing of Christmas carols, using songs that were "Christian based." (App.64a).

B. West Hayden Estates HOA Sends a Certified Letter to Homebuyers Jeremy and Kristy Morris.

The President of West Hayden Estates conferred with the HOA Board, and they began to draft a letter upon which many of the board members collaborated in emails later shown at trial. Among the reasons to refuse to allow the Christmas Program was that there were non-Christians living in the neighborhood who would be offended. The HOA sent a certified letter to the Morris family stating, in part, "We are hesitant to bring up the fact that some of our residents are Non-Christians or people of another faith and we don't even want to think of the problems that could bring up." (The letter was delivered after the Morris family had signed a sales contract, for the home, but before the closing).

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[2] He did not use language suggesting that he was asking for permission, and instead he informed her that he was "calling to reach out and be neighborly." (App.65a-66a).

When later asked about the board meeting at trial Scott acknowledged that she "may have mentioned something" about "Mr. and Mrs. Morris's Christian faith."

The President of the HOA acknowledged under sworn testimony that she understood the Christmas program to be a Christian "ministry" during her first discussion with Mr. Morris and before the certified letter was sent. (App.67a.) The letter mentioned not wanting "undesirables in the neighborhood." In other iterations of the letter shown at trial through dozens of emails between board members, the board used other words to describe "non-Christians." The HOA Board described the kinds of people who visited the Morrises previous home when they were living in a subdivision called Grouse Meadows. One draft read:

> And finally, I am somewhat hesitant in bring up the fact that some of our residents are avowed atheists and I don't even want to think of the problems that could bring up.
>
> It is not the intention of the Board to discourage you from becoming part of our great neighborhood but we do not wish to become entwined in any expensive litigation to enforce long standing rules and regulations and fill our neighborhood with the riff-raff you seemed to attract over by WalMart. Grouse Meadows indeed!!! We don't allow "those kind" in our neighborhood.

(App.68a).

In reviewing the facts about how the letter was written, 9th Cir. Judge Collins summarized the method with which the certified letter was drafted by HOA Board Members: Taylor suggested stopping at "long standing rules and regulations" (which would remove the reference to "riff-raff" that Keilig would have retained) but that the reference to "litigation"

should also be removed. About 3½ hours later, Keilig circulated a revised draft of the letter. She reported that she "changed the atheist bit and toned it down but left the paragra[p]h in." (App.69a).

C. Sellers Inform the Morrises that the HOA President Discussed How the HOA Did Not Want the Morris Family's "Beliefs" in the Neighborhood as the Basis for Sending the Certified Letter.

Several days after receiving the Certified letter, Larry and Kris Breazeal, the sellers under contract with the Morrises, telephoned Kristy Morris to inform her that the HOA was distributing a letter in the neighborhood portraying the Morris family in a "bad light" and worried the Morris family would find a way out of the sale. During the phone call, the sellers informed Kristy Morris that the President of the HOA had called the sellers about a Certified Letter (then being drafted), unaware at the time if the Morris family even received the letter. The sellers would later testify that the President of the HOA told the sellers that the letter that the HOA was sending to the Morrises was about how the HOA didn't want the "beliefs" of the Morris family pressed on others "in the neighborhood." Judge Collins noted that Board reactions to the letter were mixed. Seller Larry Breazeal remarked that he and his wife both viewed the letter as "prejudiced against the Morris[es'] Christian religion."[3]

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[3] Mr. Morris had a recording device on their phones that he activated just before Kris Breazeal, the sellers, contacted Kristy Morris and used the word "prejudicial against the Christian religion." A doctor by trade, Larry Breazeal would later confirm

Mr. Morris then began legally recording all of his conversations. In one such recorded conversation, Mr. Morris asked HOA President Jennifer Scott if the HOA was "discriminating" against the Morris family. The President stated "Yes." and that she informed the other members of the board that they had used "discriminatory language." (App.72a).

D. HOA Creates Hostile Environment of Intimidation Including Death Threats.

Refusing to be told where their family could and couldn't practice their faith and having informed the HOA Board of the potential Fair Housing Act violation, the Morrises moved into the neighborhood and went on with the planned Christmas program in defiance of what they viewed as a violation of the 1968 Fair Housing Act. The HOA's actions resulted in a hostile neighborhood including a death threat by HOA member, Larry Bird. Mr. Bird entered the Morris family property and threatened to kill Mr. and Mrs. Morris, who were standing on their driveway with a witness who testified later at trial.[4]

Intimidation included not just death threats and hostile messages left in the Morris family's mailbox, but also letters that threatened litigation if the Morrises did not take down their Christmas lights within 10-days, as the HOA was now claiming that even the lights themselves were a violation. On October 26,

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the "prejudice:" he heard from the HOA about "the Christian religion." (App.71a).

[4] One neighbor confronted Kristy in her driveway one evening, telling her that "we have enough guns and ammunition that will take care of you." (App.63a).

2015, attorneys for the board sent a four-page letter to the Morrises instructing them not to hold the event. The letter listed the various CC&R provisions the Morrises' planned event would violate, including provisions prohibiting nuisances, excessive lighting, and the raising, breeding and keeping of livestock. The letter specifically asserted that the "exterior lighting you have already installed on your home" violates the CC&Rs. The letter further argued that the county zoning ordinance and Idaho law would independently prohibit the Morrises' planned event. The letter acknowledged the Morrises hoped to mitigate the HOA's traffic concerns by the use of shuttle buses, but the letter claimed that those measures would be inadequate because nothing would stop visitors from "simply driving to the neighborhood and parking on the streets." (App.76a).

The letter warned that unless the Morrises "request[ed] and receive[d] written approval" from the board to conduct their Christmas event, the board had authorized its attorneys "to file an action seeking an injunction to prevent your event from occurring and seeking an award of all legal fees and costs incurred in that litigation." The letter concluded by stating that, if the Morrises did not reply in writing within 10 days, "the Board will assume that you are unwilling to modify your plans and legal action will follow." (*Id.*) Mr. Morris understood this selective enforcement of CCRs as retaliatory as there was no provision in the CCRs against Christmas lights—the only light provision applying to "fixtures." However one board official admitted before the Morrises moved into the house that he did not believe the CC&Rs covered the use of Christmas lights at all. (App.73a). The Morrises'

next-door neighbor testified that she could not hear any noise from the event when she was in her home. (App.77a). The Morrises claimed that the treatment they received was not consistent with how other events were handled at West Hayden Estates. Quoting from Judge Collins' dissent:

> For example, the HOA hosts an annual block party, which involves the complete closure of multiple streets within the development. The board has also taken no action against an annual Fourth of July party, involving allegedly illegal fireworks launched from the streets of the development and lasting until after midnight. The Breazeals also reported having regularly hosted parties to watch football games throughout the football season and postseason, with anywhere from 20 to 80 persons in attendance and as many as 50 vehicles parked on the neighborhood streets. The Breazeals' football-watching parties lasted for over four hours each, but the Breazeals reported that they were never contacted by the HOA regarding the parties.

(App.81a).

The first Christmas fundraiser was held for 5 nights from 6-8pm in December 2015. The HOA, under a new President named Ronald Taylor mailed a letter to the neighborhood about children peeing in snow and trash, (disputed later by attendees), but no mention was made in the letter to stop the threats against the Morris family by members of the HOA. After reading the January 2016 letter, Jeremy spoke with Taylor outside the Morrises' home, again recording the conversation. Jeremy reported to Taylor that the

Morrises had received threats and harassment, and reiterated his view that the board had engaged in discrimination against his family. Jeremy asked Taylor, "why does everyone keep coming after me?" Taylor replied, "Because someone in this association doesn't like Christmas." (App.78a). For two years, Mr. Morris videotaped similar examples of selective enforcement by the HOA such as the closing of the road for illegal firework shows every year and members having three or more dogs when the limit was two. Morris also documented vandalism of his Christmas lights which were dragged down the road. (App.91a).

A second Christmas program was held the following year again for a total of 10 hours in 2016. The owner of a bus company witnessed an HOA board member conspiring with a neighbor by crouching in a snowy ditch with a video camera to film that other neighbor repeatedly push a snowblower within feet of buses bringing visitors to the Morris family property, "flailing his arms [to feign injury] . . . like he was falling down" while "a person with a video camera" filmed the incident. (App.80a).[5] Four women would testify that they were assaulted in various ways, including, but not limited to—being chased on foot, pushed down and cussed at, and a vehicle kicked. Children were always present as neighbors gathered in the road and cussed. Other neighbors shouted obscenities outside the Morrises' home during the event. At least one resident kicked a visitor's car while cursing at the Morrises. Other residents harassed visitors, shouting

[5] The fake-injury footage was never provided in discovery, but testified to by the owner of the bus company.

obscenities at them and telling them they were not welcome in the neighborhood. (App.81a).

II. Procedural History

Petitioners initiated this instant action in U.S. District Court for the District of Idaho on January 13, 2017, exactly two years from the date of the Certified Letter which was dated January 13, 2015. The jury returned a unanimous verdict in favor of Jeremy and Kristy Morris. The jury found that West Hayden Estates engaged in religious discrimination under the Fair Housing Act by violating:

- 42 U.S.C. § 3604(b) when they intentionally discriminated against the Morrises at least in part due to their religion, before the purchase of their home,
- 42 U.S.C. § 3604(b) intentionally discriminated against the Morrises at least in part due to their religion, after the purchase of their home,
- § 3604(c) that the HOAs letter dated January 13, 2015, expressed, in the mind of an ordinary reader, a preference that a non-religious individual purchase the home, and
- § 3617 the Homeowners Association threatened, intimidated, or interfered with Mr. and Mrs. Morris' purchase or enjoyment of their home.

After 15 hours of deliberations, the jury was unanimous on all four claims and awarded the Morrises $60,000 in compensatory damages and $15,000 in punitive damages. However, 5 months after the verdict, the District Court, granted the HOA's motion for judg-

ment as a matter of law under Rule 50(b), overturning the jury's verdict. The judge reasoned that no jury could have come to that conclusion based upon the credibility of witnesses and his own view of the evidence. The judge ordered the Plaintiffs to pay attorney fees calculated to be over $111,000.

The Plaintiffs appealed the district court judge's Rule 50(b) decision to the 9th Circuit Court of Appeals to reinstate the jury verdict. On June 17, 2024, the Appellate Court issued its Opinion, agreeing with the Petitioners that a jury may have found a violation of § 3617 that the Association threatened, intimidated, or interfered with the Morrises' purchase or enjoyment of their home, and in so doing vacated the district court's order that would have found the Plaintiffs liable for rule violations, and as such, the Defendant's attorney fees. However the 9th Circuit said that no reasonable jury could have found violations of 42 U.S.C. § 3604(b) and § 3604(c). The 9th Circuit provided the Plaintiffs with the option of retrying the case solely on § 3617, and thus did not reinstate the jury award.

REASONS FOR GRANTING THE PETITION

On June 17, 2024, the 9th Circuit decided a jury *could have* found the West Hayden Estates HOA created a hostile environment for Jeremy and Kristy Morris and the Plaintiffs could seek a new trial under 42 U.S.C. § 3617 of the Fair Housing Act. By contrast, in a split verdict for the Plaintiffs, the 9th Circuit held that § 3604b and § 3604c could not meet the threshold required for sufficient evidence by a jury. It is the deci-

sion by the 9th Circuit with respect to § 3604(b) and § 3604(c) that Petitioners now seek this Court to review.

Rule 50 is one of the most misunderstood areas of Civil Procedure in American Jurisprudence. To the laymen, a jury is tasked with deciding the facts of a case and thereby renders decisions on guilt or innocence; liability or none. The role of the judge is to interpret the facts and apply the law. Both the role of the judge and the role of the jury are to be equally respected in American jurisprudence—none is subordinate to the other; except and until the jury neglects its properly charted course and renders decisions devoid of rationality.

It is the position of the Petitioners that the 9th Circuit wrongly affirmed District Court Judge B. Lynn Winmill in substituting his own judgment for that of the jury on the questions of § 3604(b) and § 3604(c). In asking this Court to consider Petitioner's Writ of Certiorari, certain broad evidentiary considerations have to be considered. It is not the wish of the Petitioners to re-litigate evidence to this high Court—evidence upon which a jury of the lower federal district court unanimously agreed. Yet some general evidentiary proof must be offered here, in this Court, because the very question at issue in Petitioner's Writ of Certiorari goes to the level of evidentiary proof necessary to undo a jury verdict. Providing some evidence is necessary for this Court to address the issue of whether certain types of evidence offered during the prosecution of an FHA claim are so powerful as to create something of a shield from unwarranted intrusion into the purview of the jury's decision-making role; consistent with the standard articulated by this Court in *Reeves v. Sanderson*

Plumbing Prods., Inc. 530 U.S. 133 (2000) and echoed by the 2nd Circuit in its recent Rule 50 analysis.

I. The District Court Reversibly Erred by Granting Judgment as a Matter of Law and Setting Aside the Jury's Verdict.

The district court committed multiple errors in overriding the jury's verdict and granting judgment as a matter of law. Any one of these errors is sufficient for this Court to reverse and reinstate the jury's verdict, which rests on ample evidence. Taken together, these errors compel that result. Most fundamentally, the district court impermissibly substituted its own judgment for the jury's—ignoring evidence it was bound by 9th Court precedent to consider, and reweighing evidence to reach a result contrary to the jury's findings.

As a general rule, "a decent respect for the collective wisdom of the jury, and for the function entrusted to it in our system, certainly suggests that in most cases the judge should accept the findings of the jury, regardless of his own doubts in the matter." *Landes Const. Co., Inc. v. Royal Bank of Canada*, 833 F.2d 1365, 1371 (9th Cir. 1987) (quoting 11 Charles Alan Wright & Arthur A. Miller, FEDERAL PRACTICE AND PROCEDURE § 2806 (1973)).

II. The 2nd and 9th Circuit Court of Appeals Recently Issued Split Opinions on the Issue of the Proper Application of Rule 50(b) and the U.S. Supreme Court Has Previously Staked Out a Position That Differs from the Present Holding by the 9th Circuit.

Before the ink of the 9th Circuit Court in the present case was dry, the 2nd Circuit was drafting its

own opinion pertaining to Rule 50, albeit in a different context (defamation)—arriving at a very different conclusion than the 9th Circuit a month earlier. Rendering its decision on August 28, 2024, and therefore not yet published, *Palin v. New York Times Company* (2nd Cir., filed August 28, 2024) the 2nd Circuit affirmed the limited role of judges to prevent intrusion into the jury's province of authority on substantive evidentiary matters under Rule 50. (App.153a).

Sarah Palin, the Republican nominee for vice president in 2008, alleged she was defamed by a New York Times editorial in 2017 that suggested the 2011 shooting of then-Rep. Gabby Giffords of Arizona was linked to a digital graphic published by Palin's political action committee the prior year. Palin sued the New York Times for defamation. In February 2022, in the middle of jury deliberations, the trial court Judge Rakoff dismissed the suit under Rule 50, ruling that no reasonable jury could find the Times was motivated by actual malice. The judge told lawyers he would dismiss the suit only after the jury returned its verdict. Jurors later ruled that the Times was "not liable" for the allegations. *Palin v. New York Times* (2nd Cir. 2024).

On August 28, 2024, the 2nd Circuit Court of Appeals overturned the dismissal of the lawsuit and said the district court judge's decision to dismiss the lawsuit "improperly intruded on the province of the jury by making credibility determinations." The appeals panel cited "several major issues at trial," including the "erroneous exclusion of evidence." In the words of the majority, "The jury is sacrosanct in our legal system, and we have a duty to protect its constitutional role, both by ensuring that the jury's role is not usurped by

judges and by making certain that juries are provided with relevant proffered evidence and properly instructed on the law." (*Palin* at App.154a).

In *Palin*, the Court explained that "in deciding a Rule 50 motion, a district court may not credit the movant's self-serving explanations or adopt possible exculpatory interpretations on his behalf when interpretations to the contrary exist." (Palin, App.174a). Further, the 2nd Circuit poured cold water on the idea of making credibility determinations. Bennet, the writer accused of defamation in the case, clicked a hyperlink before publishing a false statement. The 2nd Circuit ruled that the district court erroneously ignored this inference, in part, because it credited Defendant's denial that he clicked the hyperlink and read the article. A district court *may not* make "*credibility determinations*" when considering Rule 50 and, "although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe." *Legg v. Ulster Cnty.*, 979 F.3d 101, 114 (2d Cir. 2020) (alteration omitted) (quoting *Reeves*, 530 U.S. at 150–51). The jury was not required to believe Bennet's testimony, which could be viewed as self-serving. The district court's acceptance of that testimony in the jury's stead improperly infringed on the jury's exclusive role. (*Palin*, App.175a).

On appeal, in addition to addressing these erroneous credibility considerations, the 2nd Circuit looked at the weight given to evidence. One such evidentiary matter involved whether the writer accused of defamation, read certain articles during his editorial research. The Appellate Court concluded that how to interpret and what weight to assign to these articles

must be left to the jury. *See Legg*, 979 F.3d at 114. Judgment for defendants as a matter of law was unwarranted. In *Burnett v. Ocean Properties, Ltd*, for example, the court made clear its review is weighted toward preserving the jury verdict, and it will uphold the verdict unless the evidence was so strongly and overwhelmingly inconsistent with the verdict that no reasonable jury could have returned it. *Burnett v. Ocean Properties, Ltd*., 422 F.Supp.3d 369 (2019).

In the present case, and unlike the 2nd Circuit's Rule 50 analysis, 9th Circuit Judge Collins' dissent tracks especially closely to that of the majority of the 2nd Circuit in *Palin*. Judge Collins argues vociferously that the certified letter sent by the HOA was "OPENLY" discriminatory in violation of the publication of a discriminatory writing under 42 U.S.C. § 3604(c). (App.62a). Are we then to accept the 9th Circuit's argument that 9th Circuit Court Judge Collins had sufficient evidence whereby he could reach a verdict, but a jury could not? Likewise, as in *Palin*, Judge Collins also takes the position that the district court judge was not only weighing evidence, but also making credibility determinations in contravention to this Court's decision in *Reeves* and the long-standing legal standard set forth in FRCP Rule 50.

> The district court's order indicates that it made class-wide judgments as to the credibility of each side's witnesses based on its assessment of a single witness for each side—namely, Jeremy for the Morrises, and Scott for the HOA. Thus, after finding Jeremy "not credible" and Scott "convincing and credible," the court announced that its "evaluation of their respective testimony is representative

of its evaluation of the witnesses in the case more broadly." Given the more nuanced record in this case, this unexplained class-wide approach to witness credibility was an abuse of discretion. (App.100a-101a).

III. The Petition Involves an Important Question Regarding the Evidentiary Burden Required Under Fed R. Civ. P. 50 to Overturn a Jury and Which This Court Has Never Examined in the Context of the 1968 Fair Housing Act.

In *Reeves v. Sanderson Plumbing Prods., Inc.* 530 U.S. 133 (2000), this Court granted certiorari on the issue of whether a plaintiff's prima facie case of discrimination (as defined in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)), combined with sufficient evidence for a reasonable fact-finder to reject the employer's non-discriminatory explanation for its decision, is adequate to sustain a finding of liability for intentional discrimination. In short, this Court found that even with plausible alternative explanations to discrimination, a jury could, nonetheless, have accepted the argument made by the Plaintiff's counsel that discrimination practices had occurred. In doing so, this Court recognized the important role of the jury as the finder-of-fact, and as such, that the jury is tasked with weighing the evidence and coming to a conclusion. Rule 50 should therefore not be used in such a way as to disregard favorable evidence to the non-moving party. A judge should, in effect, attempt to stay in his or her lane, so-to-speak; the judge's substitution of his own judgment for that of the jury should only occur when there is truly no legally sufficient evidentiary basis for a reasonable jury to make the finding.

The facts in *Reeves* are relatively straightforward. Reeves was a 57 year-old supervisor in a department that saw layoffs allegedly due to poor performance. The company claimed he poorly maintained certain timekeeping records and Reeves argued that this was merely a pretext for terminating him due to his age, in violation of the Age Discrimination in Employment Act of 1967 (ADEA). The jury found for Reeves and the Defendant sought a JMOL under Rule 50. The district court rejected the motion, but the 5th Circuit reversed and argued that Rule 50 was appropriate because Reeves may well have offered sufficient evidence for the jury to have found that respondent's explanation was pretextual, the 5th Circuit explained that this did not mean that Reeves had presented sufficient evidence to show that he had been fired because of his age.

In finding the evidence insufficient, the Appellate Court wrongly weighed the additional evidence of discrimination introduced by Reeves against other circumstances surrounding his discharge, including that his manager's age-based comments were not made in the direct context of Reeves' termination; there was no allegation that the other individuals who recommended his firing were motivated by age; two of those officials were over 50; all three supervisors were accused of inaccurate record-keeping; and several of respondent's managers were over 50 when Reeves was fired. (*Reeves* at 153). Justice O'Connor, explained that when a judge entertains a motion for judgment as a matter of law, the court should review all of the evidence in the record. In doing so, however, the court must draw all reasonable inferences in favor of the nonmoving party. It may not make credibility determinations or weigh the evidence. *Lytle v. Household Mfg., Inc.*, 494

U.S. 545, 554–555 (1990); *Liberty Lobby, Inc.*, supra, at 254; *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 696, n. 6 (1962). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Liberty Lobby*, supra, at 255. Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. That is, the court should give credence to the evidence favoring the nonmovant as well as that "evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses." *Id.*, at 300.

Reeves is similar to *Morris v. West Hayden Estates HOA*, in that they are both cases involving discrimination in the context of a JMOL. Like in *Reeves*, Petitioner argued that employment termination on the grounds of poor timekeeping was pretextual. Similarly, in the present case, Respondent HOA asserts that traffic concerns, lighting, and crowds were the underlying reasons for the actions taken by the HOA, and not religious discrimination. The Morrises argue that traffic and lighting are a pretext for housing discrimination as demonstrated by the certified letter, tape recordings, and trial court testimony.

However, unlike *Reeves*, which had comparably little nexus to discriminatory intent, here the nexus is enormous. 9th Circuit Judge Collins calls the letter itself "OPENLY discriminatory." Quoting Judge Collins, "When the Morrises expressed offense at this openly discriminatory letter, the HOA responded by ginning

up opposition among the neighborhood to the Morrises." (App.62a).

42 U.S.C. § 3604(c) is clear that any written statement that shows a preference for or against religion, even in part, is prohibited. Judge Collins notes:

> The district court's analysis of the letter reflected an even more egregiously impermissible weighing of the inferences. The district court simply adopted wholesale the HOA's reading of the letter, notwithstanding the reasonable inferences to the contrary. Thus, the district court ignored the letter's troubling reference to the Morrises' public display of their Christian faith, instead pointing to the fact that the letter also included a disclaimer that stated, "It is not the intention of the Board to discourage you from becoming part of our great neighborhood." The district court likewise tendentiously read the letter as merely reflecting an innocent goal of achieving religious pluralism. But appending "I am not discriminating" to the end of an otherwise discriminatory statement does not preclude a jury from drawing a reasonable inference of discrimination. (*Id*. at App.98a).

Idaho District Court Judge Winmill included the legal standard in his own Memorandum: we must ask "whether the evidence permits only one reasonable conclusion, and that conclusion is contrary to the jury's verdict." *Josephs v. Pacific Bell*, 443 F.3d 1050, 1062 (9th Cir. 2006). However, in making that determination, we may not reweigh the evidence ourselves, *EEOC v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009), and must keep in mind that "[c]red-

ibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

In assessing the voluminous evidence possessed by the Petitioner's before trial, district court Judge Winmill denied the HOA's motion for summary judgment on the Morrises' FHA claims, concluding that a reasonable jury could find for the Morrises on these claims. The district court specifically stated, "I really think that if I were to grant summary judgment [to the HOA], I think the Ninth Circuit would reverse me almost immediately." Idaho District Judge Winmill explained:

> So the question is whether a jury could, in viewing that statement contained in the letter and, in particular, coupled with the other evidence of statements made about wanting to get the plaintiffs out of the neighborhood, whether or not a reasonable jury could view that as evidencing a discriminatory intent. And I just have to say: I think they could. I'm not saying that they will. I'm not in any way suggesting that, at a jury trial, that the jury is going to come back and agree with the Morrises. Applying the summary judgment standard to the facts of this case, which is what I have to do, that the plaintiffs have presented sufficient evidence really in the form of the letter almost by itself. But even if I made a statement earlier that the letter by itself wasn't enough, that probably wasn't well advised because I think that reference to impact upon other—'others

> in the area that may not be Christian,' that coupled certainly with the statements that—of kind of personal animus, I think, is enough that a reasonable jury could concluded that there was, in fact, a discriminatory motive.

Judge Collins quoting District Ct. Judge Winmill, on the Summary Judgement Motion (App.84a). [underline emphasis added]

Judge Winmill doubled-down that the evidence was sufficient after the close of evidence at trial during a Rule 50a Motion:

> [T]hat [January 16] letter is the linchpin, I think, why summary judgment was denied and why I'm going to deny the Rule 50 motion as well. I think a jury could infer that they were trying to prevent someone from purchasing the home and that at least part of the motivation was religion."

Judge Collins quoting District Ct. Judge Winmill. (App.85a).

To summarize, this Court makes it clear in *Reeves* that while the whole of the evidence must be considered when entertaining Rule 50, any judge must be careful not to weigh evidence and make credibility determinations because those are jury functions, not those of a judge," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). There was much ambiguity with respect to the facts in *Reeves* as is common in many discrimination claims. Few defendants in discrimination cases come out and tell you directly that he or she is discriminating against you. However, in *Morris v. West Hayden Estates*, the HOA actually did! The HOA was tape recorded admitting to discrimination.

As for the certified letter, 9th Circuit Judge Collins called it "openly discriminatory." (App.62a). The majority on appeal should not have affirmed Judge Winmill's weighing of evidence and credibility of witnesses. Moreover, if there is a comparable evidentiary burden, the Petitioners far exceeded the amount and quality of evidence that was lacking in *Reeves*, which this court nonetheless found sufficient for a jury to reach a verdict.

IV. The 9th Circuit's Interpretation of Rule 50 Will Result in a Parade of Horribles If Judges Are Permitted to Weigh Evidence and the Credibility of Witnesses Thereby Violating the Seventh Amendment Right to a Federal Jury Trial in Civil Cases.

This case presents an important question concerning the proper scope of Rule 50(b) and its potential to infringe upon the Seventh Amendment right to a jury trial. The District Court's decision to overturn the jury's verdict represents an unwarranted intrusion into the jury's fact-finding role. By substituting its own judgment for that of the jury, the District Court effectively nullified the constitutional guarantee of a jury trial in civil cases. This Court should grant certiorari to clarify the proper application of Rule 50(b). A narrow construction of Rule 50(b) is necessary to preserve the vital role of the jury in our judicial system.

The jury's verdict, based on its assessment of witness credibility and the totality of the evidence, should not be lightly disregarded. *Acantha LLC v. DePuy Synthes Sales Inc.*, 406 F.Supp.3d 742 (2019). The court noted that overturning a jury verdict is not done lightly and will only occur if "no rational jury could have brought in a verdict against it." This

case highlights the stringent standard applied when considering a Rule 50(b) motion. This is particularly true in cases involving sensitive issues of discrimination, where the jury's assessment of the facts is crucial. By affirming the lower court's decision and by way of its application of Rule 50(b) to 42 U.S.C. § 3604(b) and § 3604(c) of the Fair Housing Act, the 9th Circuit has set a precedent that even a TAPE RECORDED ADMISSION can be deemed insufficient for a jury to make a decision and openly discriminatory language about "pressing beliefs" is insufficient for a jury to fulfill its role as trier-of-fact.

A. Rule 50 States That a Judge Cannot Weigh the Credibility of Witnesses, but the District Court Judge in This Case Said That Some Witnesses Were "Credible" and Some Were Not.

The burden borne by the moving party in motions for Rule 50 includes the long-established legal standard of not weighing the credibility of witnesses with respect to Rule 50. And yet that's exactly what happened in this case. Quoting from Judge Berzon of the 9th Circuit, "The record also contains multiple recordings of Jeremy Morris initiating altercations with his neighbors and thus supports the district court's determination that Morris was "aggressively confrontational," a conclusion that could cast doubt on his credibility. (App.43a). In his District Court Memorandum Decision & Order overturning the jury, Judge Winmill correctly cites the legal standard: "[I]n entertaining a motion for judgment as a matter of law, the court may not make credibility determinations or weigh the evidence." *E.E.O.C. v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (Winmill Order, page 3). The District Court

minimized the tape recorded death threats to the Morris family "as recorded, cannot be reasonably interpreted as a credible death threat." (*Id.* at 14). Judge Winmill weighed evidence in the way that a jury should. This credibility determination was not confined to the analysis of Rule 59 New Trial, which would have been permissible. The District Judge cites to the credibility of the death threat in his decision to overturn the jury under Rule 50. In short, the District Judge erred by invoking the credibility of witnesses to justify overturning the jury:

> The jury, despite the Court's instructions, undoubtedly considered the threats made to the Plaintiffs and the Christmas program attendees in arriving at their verdict. Worse yet, the "death threat" that Plaintiffs referred to frequently early on in the trial was hyperbole . . . this result is unjust.

Judge Winmill Memorandum and Order at 14.

If no reasonable jury could have come to the conclusion that the death threats were anything more than hyperbole, then why did Judge Collins of the 9th Circuit believe a jury could? Certainly Judge Collins is a stand-in for a reasonable juror and yet he came to a different conclusion. The Morrises were subjected to harassment from the other residents, including a death threat from HOA member Larry Bird. Contrary to the district court and 9th Circuit Court's dismissiveness of Bird's threat, Bird's comments represented a genuine threat to the Morrises. Bird told Kristy that "we have enough guns and ammunition that will take care of you," and he warned her that he could evade protection she might seek. (App.90a). The district court erred in dismissing the Morrises' account of

Kristy's encounter with Bird as "embellished," because courts may not make credibility assessments when ruling on a Rule 50(b) motion. *Go Daddy Software*, 581 F.3d at 961. Moreover, there was evidence that Bird's death threat caused the Morrises' significant fear, including causing them to obtain concealed carry permits to protect themselves. And a reasonable jury could conclude that there was a causal relation between the board's actions and Bird's conduct. (App.90a-91a). The fact that different people come to different conclusions when viewing evidence is precisely why our system of American jurisprudence places this responsibility in the hands of a jury to weigh both direct and circumstantial evidence. It should not be left to the purview of a judge in the context of the constitutionally protected right to a jury in federal civil cases.

The 9th Circuit's partial affirmation of the District Court's decision creates a dangerous precedent that could undermine the Seventh Amendment. If under this new legal paradigm established by the Court of Appeals, judges are permitted to overturn jury verdicts based on their own assessment of the evidence, the right to a jury trial will be meaningless. This Court should grant certiorari to address this important issue and ensure the Seventh Amendment right to a jury trial is adequately protected.

B. If a Tape Recorded Admission of Religious Discrimination Is Insufficient for a Jury to Make a Finding Under 42 U.S.C. § 3604(b) and § 3604(c), Then No Jury Verdict Could Withstand the Power of a Judge to Insert His Own Judgment Under This Expanded Rule 50 Authority.

Few cases have tape recorded admissions presented to a jury. The case in *Reeves* certainly did not and this Court upheld the jury's decision despite highly circumstantial evidence in that case. Here, there exist numerous tape recordings of the HOA admitting they discriminated, that the Morrises were not violating rules but that the HOA just didn't want the Morrises, that some in the association didn't like Christmas, and that the sellers found statements by the HOA to be highly prejudicial against Christians. Other expressions of hostility emerged as well. In the aftermath of the February 2015 board meeting, Angelene Cox, a West Hayden Estates resident who lived adjacent to the Morrises, called Scott and asked whether the HOA's complaints about the CC&Rs were genuine. In response, Scott told her that, "They just don't want him there." Cox further reported in an affidavit that "[s]ome neighbors openly referred to [the Morrises] as 'the enemy.'" (App.80a).

Even the 9th Circuit acknowledged the Board's letter to the Morrises could reasonably be read to indicate that the program's association with the Christian faith was one consideration in the Board's opposition to the show. In addition, in his recorded argument with Jeremy Morris, Ron Taylor stated that "somebody in this association . . . not lik[ing] Christmas" was one reason why the Board continued to oppose the

Morrises' Christmas program. These statements sufficiently support an inference by the jury that an anti-Christian purpose was at least *a* motivating factor in the Board's conduct regarding the proposed Christmas event, independent of any other concerns also underlying that conduct. And given this permissible inference, there was sufficient evidence for the jury rationally to conclude that the Board interfered with the Morrises' exercise of their right to purchase and enjoy their home, at least in part, because of their religious expression, and therefore violated § 3617 of the FHA. (App.26a). Here, the majority cites the weight of this evidence as to the hostile environment created by the HOA, but oddly seems incapable of applying that same evidence the jury had at their disposal to § 3604(b) and § 3604(c).

C. The District Court Judge Wrongly Excluded Evidence; But Scapegoating the Jury as Not Having Followed Instructions to Disregard Evidence Simply Because the Jury Renders the 'Wrong' Verdict Should Not Be a Permissible Use of Rule 50.

If the 9th Circuit's opinion in this case goes unchallenged, then every objection or evidentiary decision in every case under the sun could be fertile ground for a judge unhappy with a jury verdict to assert that the jury wrongly disregarded some court instruction and therefore the judge's opinion in the case should prevail over the jury. In this case, the district court doubled down on its errors by instructing the jury not to consider evidence of discrimination and harassment by the members of the Homeowners Association—and then setting aside the presumption that juries follow

instructions. The evidence was proper for the jury to consider as a matter of law, however, because the statute, federal regulations, and case law all permit liability where, as here, a Homeowners Association knows about discriminatory housing practices, has the tools to address those practices, and fails to do so. 24 C.F.R. § 100.7. It is indisputable that the Homeowners Association here knew about the discrimination the Morrises faced from their neighbors—indeed, the Homeowners Association was the architect of much of that discrimination, and neighborhood residents simply followed the Homeowners Association's lead. Judge Winmill cited the exclusion of this evidence as one potential reason the jurors decided the way they did. One need not have a deep imagination to see the judicial abuse that could be unleashed if Rule 50 was expanded in this way to include any case where a jury was given instructions and the judge simply asserts those instructions were not followed after the verdict has come in.

V. In Substituting Its Own Judgment on the Meaning of the Certified Letter Sent by the HOA, the District Court Judge Committed Reversible Error by Changing the "Ordinary Reader Standard" from the "Preference" Required by § 3604(c) to One of Intent: Jurors Are Ordinary Readers Too.

42 U.S.C § 3604(c) of the FHA is governed by the "ordinary reader" standard. The district court applied the wrong legal standard to § 3604(c) by imputing that the FHA always requires proof of *intent* to discriminate, when in fact a violation can *also* be proved by showing that an ordinary reader would find "that a particular [class of persons] is preferred or dispreferred."

Ragin v. New York Times Co., 923 F.2d 995, 999 (2d Cir. 1991). As the jury found, the letter sent to the Morrises reflected a preference that a non-religious individual—or, at the very least, an individual with religious beliefs other than those of the Morrises—purchase the Morrises' home. The district court's decision was error twice over: In demanding that the Morrises demonstrate intent, rather than preference, the district court applied an incorrect legal standard. And in substituting its own interpretation of the contested language for that of the jury's, the district court usurped the jury's role.

Under the proper ordinary-reader standard, it was of course the jury's—not the court's—role to weigh the evidence and draw "legitimate inferences from the facts." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). In determining whether to direct a verdict in defendant's favor, the court was obligated to "give *significant* deference to the jury's verdict and to the nonmoving parties." *Reese v. Cty. of Sacramento*, 888 F.3d 1030, 1036 (9th Cir. 2018).

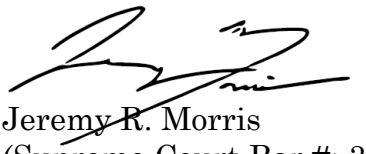
An ordinary reader, who is "neither the most suspicious nor the most insensitive person in our society," *Miami Valley Fair Hous. Ctr., Inc. v. Connor Grp.*, 725 F.3d 571, 575 (6th Cir. 2013), could have reasonably drawn the inference that the letter expressed a preference against Christians. At the very least, the letter does not require the *opposite* conclusion—that it does *not* express a preference against Christians—and that is all the Morrises must show for the jury's verdict to be reinstated. *McLean*, 222 F.3d at 1153 (JMOL requires that the evidence, construed in the light most favorable to the nonmoving party, only permits a conclusion contrary to the jury's findings.).

Judgment as a matter of law is improper unless the evidence, construed in the light most favorable to the nonmoving party, permits only one conclusion—a conclusion that is contrary to the jury's findings. *McLean v. Runyon*, 222 F.3d 1150, 1153 (9th Cir. 2000).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court grant the Writ of Certiorari to review the judgment of the 9th Circuit Court of Appeals, and reinstate the Idaho District Court jury verdict and Petitioners' award.

Respectfully submitted,



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