

No. 25-759

---

---

**In the Supreme Court of the United States**

AMBER LAVIGNE,

*Petitioner,*

*v.*

GREAT SALT BAY COMMUNITY SCHOOL BOARD,

*Respondent.*

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

---

**BRIEF OF THE MANHATTAN INSTITUTE  
AS AMICUS CURIAE  
IN SUPPORT OF PETITIONER**

---

Ilya Shapiro

*Counsel of Record*

Trevor Burrus

MANHATTAN INSTITUTE

52 Vanderbilt Ave.

New York, NY 10017

(212) 599-7000

ishapiro@manhattan.institute

February 23, 2026

---

---

**QUESTION PRESENTED**

This brief focuses on the first question presented in the petition:

Whether a court can rely on a probable alternative explanation at the 12(b)(6) stage to dismiss a claim, as five circuits hold, or whether a complaint can only be dismissed if the plaintiff's explanation is itself implausible, as three circuits hold.

## TABLE OF CONTENTS

QUESTION PRESENTED .....	i
TABLE OF AUTHORITIES .....	iv
INTEREST OF <i>AMICUS CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	1
ARGUMENT .....	4
I. THIS COURT HAS REPEATEDLY HELD THAT “PLAUSIBILITY” IS NOT A PROBABILITY REQUIREMENT AND DOES NOT AUTHORIZE COURTS TO WEIGH COMPETING INFERENCES .....	4
II. THE CIRCUITS ARE INTRACTABLY DIVIDED ON WHETHER A PLAINTIFF MUST DISPROVE “OBVIOUS ALTERNATIVE EXPLANATIONS” AT THE PLEADING STAGE .....	7
A. Several Circuits Routinely and Erroneously Dismiss Claims by Crediting Defendants’ Asserted “Innocent” Explanations as More Likely .....	7
B. Five Circuits Correctly Hold That Rule 12(b)(6) Does Not Permit Courts to Choose Between Two Plausible Inferences .....	10
III. THE PRACTICE OF WEIGHING COMPETING EXPLANATIONS AT THE PLEADING STAGE EXCEEDS JUDICIAL COMPETENCE AND DISPLACES THE STRUCTURAL ROLE OF DISCOVERY AND FACT-FINDING .....	13

A. Crediting Facially Lawful Explanations at the Pleading Stage Collapses the Distinction Between Pleading, Discovery, and Fact-Finding .....	13
B. Requiring Plaintiffs to Negate Benign Explanations Before Discovery Magnifies Information Asymmetry and Undermines Uniform Federal Procedure .....	15
IV. THE DECISION BELOW PRESENTS A CLEAN VEHICLE FOR RESOLVING WHETHER COURTS MAY CREDIT FACIALLY LAWFUL ALTERNATIVE EXPLANATIONS AT THE PLEADING STAGE.....	17
CONCLUSION .....	18

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Anderson News, L.L.C. v. American Media, Inc.</i> , 680 F.3d 162 (2d Cir. 2012) .....	10
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009) .....	6
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007) .....	2, 5
<i>Braden v. Wal-Mart Stores, Inc.</i> , 588 F.3d 585 (8th Cir. 2009) .....	12
<i>Doe v. Emory Univ.</i> , 110 F.4th 1254 (11th Cir. 2024) .....	8
<i>Evergreen Partnering Group, Inc. v. Pactiv Corp.</i> , 720 F.3d 33 (1st Cir. 2013) .....	8
<i>Frith v. Whole Foods Market, Inc.</i> , 38 F.4th 263 (1st Cir. 2022) .....	8
<i>Hughes v. Northwestern Univ.</i> , 63 F.4th 615 (7th Cir. 2023) .....	12
<i>In re Pre-Filled Propane Tank Antitrust Litigation</i> , 860 F.3d 1059 (8th Cir. 2017) .....	13
<i>Mator v. Wesco Distrib., Inc.</i> , 102 F.4th 172 (3d Cir. 2024) .....	8
<i>Matrixx Initiatives, Inc. v. Siracusano</i> , 563 U.S. 27 (2011) .....	6
<i>McCleary-Evans v. Maryland Dept. of Transp.</i> , 780 F.3d 582 (4th Cir. 2015) .....	9
<i>Monell v. Dept. of Social Servs.</i> , 436 U.S. 658 (1978) .....	3

<i>National Rifle Association v. Vullo</i> , 602 U.S. 175 (2024) .....	3, 6, 7
<i>Palin v. N.Y. Times Co.</i> , 940 F.3d 804 (2d Cir. 2019) .....	11
<i>Pickett v. Texas Tech Univ. Health Sciences Ctr.</i> , 37 F.4th 1013 (5th Cir. 2022) .....	9
<i>Starr v. Baca</i> , 652 F.3d 1202 (9th Cir. 2011).....	11
<i>Troxel v. Granville</i> , 530 U.S. 57 (2000).....	2
<i>U.S. ex rel. Integra Med Analytics, L.L.C. v. Baylor Scott &amp; White Health</i> , 816 F. App'x 892 (5th Cir. 2020).....	9
<i>VoteVets Action Fund v. Dept. of Veterans Affairs</i> , 992 F.3d 1097 (D.C. Cir. 2021).....	11
<b>Other Authorities</b>	
A. Benjamin Spencer, <i>Plausibility Pleading</i> , 50 B.C. L. Rev. 431 (2009) .....	14
Alexander A. Reinert, <i>The Burdens of Pleading</i> , 162 U. Pa. L. Rev. 1767 (2014).....	17
Arthur R. Miller, <i>From Conley to Twombly to Iqbal</i> , 60 Duke L.J. 1 (2010) .....	14

**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The Manhattan Institute (MI) is a nonprofit public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility.

MI has filed numerous briefs in this Court and other courts on the issues of parental rights and the gender-transitioning of children. MI is concerned about the scientific, policy, and constitutional issues around such questions. But this brief focuses on the procedural issue that must be considered before the substantive issues. The question presented here affects a wide range of constitutional issues that MI has an interest in, such as the right to earn a living, free speech, racial discrimination, and property rights.

**SUMMARY OF ARGUMENT**

This case presents a recurring and outcome-determinative question about the proper application of Federal Rule of Civil Procedure 12(b)(6): whether courts may dismiss a complaint by resolving factual ambiguity in favor of a defendant’s asserted “obvious alternative explanation,” or whether courts should accept well-pleaded allegations as true and draw reasonable inferences in the plaintiff’s favor.

This case’s underlying substantive issue, concerning the possible “social transitioning” of a minor by school officials without parental notice or authorization, is undoubtedly important—and one that is

---

<sup>1</sup> Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party’s counsel, and no person or entity other than *amicus* funded its preparation or submission.

increasingly before federal courts. Yet that issue is difficult to judicially review before addressing how and why this case was dismissed. Here, *amicus* focuses on the procedural question while still being concerned about the substantive question of constitutionally guaranteed parental rights, which is the oldest right to be recognized as “fundamental” by this Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

This Court has repeatedly held that plausibility pleading is not a probability requirement. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A complaint need not show that unlawful conduct is more likely than lawful conduct; it need only allege sufficient factual matter to permit a reasonable inference of liability. Despite that guidance, lower courts have increasingly transformed *Twombly*’s reference to “obvious alternative explanations” into a dispositive screening device—one that requires plaintiffs to negate lawful explanations before discovery and invites courts to weigh competing inferences at the pleading stage. In *Twombly*, the Court invoked “obvious alternative explanations” to describe circumstances in which the pleaded facts themselves fail to support a reasonable inference of liability, not to authorize courts to choose between competing plausible accounts of the same conduct at the pleading stage. *Id.* at 567.

That practice has produced an entrenched circuit split. Some circuits dismiss complaints whenever alleged conduct is “consistent with” lawful behavior, effectively resolving factual uncertainty against plaintiffs. Other circuits correctly hold that Rule 12(b)(6) does not permit courts to choose between two plausible explanations for the same conduct, even if one appears more likely at the outset. In those jurisdictions,

competing narratives are tested through discovery and resolved by factfinders, not by judicial supposition.

The decision below squarely implicates this divide. The First Circuit did not foreclose petitioner’s allegations that the school covertly “socially transitioned” her child. Instead, it dismissed the complaint at the pleading stage by crediting the school board’s asserted alternative explanation, namely, that its officials were merely interpreting state law rather than acting under an unwritten policy of deception. App. 18a–20a. The lower court regarded that explanation as dispositive in assessing plausibility and invoked “common sense” to weigh competing inferences without evidentiary development. Thus, the decision below aligned itself with one side of the circuit split and is in tension with the settled rule that plausible factual allegations must be viewed in the light most favorable to the plaintiff.

This reasoning in the First Circuit’s decision reflects a broader and recurring phenomenon: the use of facially lawful alternative explanations to defeat plausibility at the threshold, which affects innumerable cases of all types. But, as this Court recently recognized in *National Rifle Association v. Vullo*, a government defendant’s claim that its actions were merely “reasonable regulatory” conduct cannot be credited at the pleading stage without displacing the role of discovery. 602 U.S. 175, 191 (2024). The same concern arises in supervisory and *Monell* liability cases, where defendants invoke internal processes or statutory compliance to rebut plausible allegations of knowledge, ratification, or intent. See *Monell v. Dept. of Social Servs.*, 436 U.S. 658 (1978).

In particular, it is difficult to imagine how *Monell* liability could be adequately alleged under such a test,

making this approach to 12(b)(6) pleading especially destabilizing in public law and civil rights cases. In such cases, evidence of intent, ratification, or institutional motive resides almost entirely within a defendant's internal processes. Plaintiffs should not have to disprove benign explanations that they don't have the information to disprove. Such a requirement turns 12(b)(6) into an illegitimate gatekeeping device based on which circuit the case is filed in.

This case is a clean vehicle for resolving the circuit split on whether Rule 12(b)(6) permits courts to resolve factual ambiguity by choosing among competing explanations. The petition should be granted.

## ARGUMENT

### **I. THIS COURT HAS REPEATEDLY HELD THAT "PLAUSIBILITY" IS NOT A PROBABILITY REQUIREMENT AND DOES NOT AUTHORIZE COURTS TO WEIGH COMPETING INFERENCES**

This Court's pleading decisions draw a clear and consistent distinction between assessing whether a complaint states a plausible claim for relief versus determining which of several competing explanations for alleged conduct is more likely true. Rule 12(b)(6) permits the former; it does not authorize the latter.

Plausibility and probability may be somewhat necessarily vague terms, but they have enough meaning in both common language and this Court's precedents to identify a clear distinction. If a wife notices her husband is charging unexpected hotel stays, taking late nights at work, and is emotionally detached, she could say it is "plausible" that he is cheating on her. If a friend comes in with an alternative explanation,

perhaps that he's working late to pursue a promotion, it would be odd to describe that alternative explanation as "probable" without further evidence. It would be even odder to say that the alternative explanation defeats the plausibility of the original allegation. That common usage follows this Court's precedents.

In *Bell Atlantic Corp. v. Twombly*, the Court made explicit that plausibility pleading "does not impose a probability requirement at the pleading stage." 550 U.S. at 556. A complaint survives dismissal so long as the alleged facts permit the court to draw a reasonable inference that the defendant is liable for the misconduct alleged. *Id.* at 556–57. The Court explained that dismissal is warranted only where allegations are "merely consistent with" liability and fail to cross the line "between possibility and plausibility." *Id.* at 557. The presence of alternative lawful explanations does not justify dismissal where the pleaded facts, taken as true, reasonably support the plaintiff's inference of liability. *Id.* at 556.

To be sure, *Twombly* recognized that an "obvious alternative explanation" may reveal that the pleaded facts themselves do not reasonably support the alleged inference of illegality. *Id.* at 567. But *Twombly* does not authorize courts to dismiss where the complaint supports a reasonable inference of liability and the defendant merely offers a competing account of the same conduct. The relevant question is whether the pleaded facts render the plaintiff's theory implausible, not whether a defendant can articulate an alternative narrative consistent with lawful behavior.

That distinction is foundational. The Federal Rules do not require plaintiffs to anticipate and negate every conceivable innocent explanation for a defendant's

conduct before discovery. Instead, courts must accept well-pleaded factual allegations as true and draw reasonable inferences in the plaintiff's favor. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). Determining which competing explanation ultimately prevails is the function of discovery and fact-finding, not pleading-stage adjudication.

The Court also applied *Twombly*'s plausibility framework in *Matrixx Initiatives, Inc. v. Siracusano*, rejecting a categorical rule that allegations are insufficient absent “statistically significant” proof. 563 U.S. 27, 38–45 (2011). The Court held that materiality cannot be reduced to a bright-line statistical-significance requirement and instead turns on the “source, content, and context” of the information. *Id.* at 44–45. And when *Matrixx* argued that researchers had not adequately ruled out an alternative cause (the common cold), the Court answered in expressly pleading-stage terms: “to survive a motion to dismiss, [plaintiffs] need only allege ‘enough facts to state a claim to relief that is plausible on its face.’” *Id.* at 52 n.12 (quoting *Twombly*, 550 U.S. at 570 (2007)).

Most recently, this Court's decision in *National Rifle Association v. Vullo* confirms that, at the Rule 12(b)(6) stage, courts may not dismiss a complaint by crediting a defendant's asserted lawful explanation where the pleaded facts, taken as true and assessed as a whole, plausibly support an inference of unlawful conduct. 602 U.S. 175, 191–95 (2024). There, this Court rejected the Second Circuit's reliance on the regulator's characterization of her actions as ordinary or legitimate enforcement activity, reiterating that courts must accept well-pleaded factual allegations as true, draw reasonable inferences in the plaintiff's

favor, and evaluate the complaint holistically rather than allegation by allegation. *Id.* at 191–94. Although discovery might later show that the defendant’s explanation is correct, the Court emphasized that such competing explanations cannot defeat plausibility at the pleading stage when the complaint plausibly alleges unconstitutional conduct. *Id.* at 195.

Taken together, these decisions establish a settled rule: plausibility pleading is a threshold inquiry into legal sufficiency, not a comparative assessment of factual likelihoods. An asserted “innocent” explanation defeats a complaint only when it renders the plaintiff’s inference implausible, not when it merely presents an alternative account that might later persuade a factfinder. When courts dismiss claims by weighing competing inferences, they depart from this Court’s pleading framework and convert Rule 12(b)(6) into a mechanism for resolving factual disputes.

## **II. THE CIRCUITS ARE INTRACTABLY DIVIDED ON WHETHER A PLAINTIFF MUST DISPROVE “OBVIOUS ALTERNATIVE EXPLANATIONS” AT THE PLEADING STAGE**

### **A. Several Circuits Routinely and Erroneously Dismiss Claims by Crediting Defendants’ Asserted “Innocent” Explanations as More Likely**

Courts in the First, Third, Fourth, Fifth, and Eleventh Circuits have dismissed complaints when the alleged facts are “consistent with” lawful conduct, effectively requiring plaintiffs to negate defendants’ benign explanations in the complaint itself. *See, e.g., Frith v. Whole Foods Market, Inc.*, 38 F.4th 263, 271–76 (1st Cir. 2022) (affirming dismissal where the alleged facts

were “just as much in line with” a nondiscriminatory explanation and therefore failed to plausibly allege discriminatory intent).<sup>2</sup> Applying this approach, the court below concluded that a complaint does not cross the plausibility threshold where the pleaded facts support an “obvious alternative explanation” and do not include allegations pointing meaningfully away from lawful conduct.

That approach sits in tension with the First Circuit’s own prior instruction. As it explained in *Evergreen Partnering Group, Inc. v. Pactiv Corp.*, at the pleading stage courts may not choose between “competing inferences” or “credit a defendant’s counter-allegations.” 720 F.3d 33, 45 (1st Cir. 2013) (citing *Twombly*, 550 U.S. at 555–56). The decision below adopts the opposite approach by crediting a benign explanation for the challenged conduct at the Rule 12(b)(6) stage rather than permitting discovery to test that explanation once a plausible inference of unlawful conduct has been pleaded.

The Fourth Circuit has adopted a similar framework. In *McCleary-Evans v. Maryland Dept. of Transportation*, the court dismissed a discrimination claim because the allegations were “consistent with” lawful hiring practices and failed to plausibly support an inference of discriminatory intent. 780 F.3d 582, 586

---

<sup>2</sup> See also, *Mator v. Wesco Distrib., Inc.*, 102 F.4th 172, 184–85 (3d Cir. 2024) (explaining that dismissal may be warranted where a defendant’s alternative explanation is “obvious,” “natural,” or “more likely” than the plaintiff’s theory, citing *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009)); *Doe v. Emory Univ.*, 110 F.4th 1254, 1258–60, 1262–63 (11th Cir. 2024) (applying *Doe v. Samford Univ.*, 29 F.4th 675 (11th Cir. 2022), and affirming dismissal where allegations were “consistent with” an “obvious alternative explanation” suggesting lawful conduct).

(4th Cir. 2015). Although the court acknowledged that discriminatory intent was “possible,” it concluded that the complaint did not plausibly allege discrimination in light of an “obvious alternative explanation”—namely, that the selected candidates were viewed as more qualified—an explanation the court treated as defeating plausibility at the pleading stage. *Id.* at 588.

The Fifth Circuit’s decisions reflect tensions within the district. In *U.S. ex rel. Integra Med Analytics, L.L.C. v. Baylor Scott & White Health*, the court affirmed dismissal at the pleading stage by crediting a lawful “obvious alternative explanation” for the defendant’s conduct—namely, that the defendant was ahead of industry peers in implementing updated Medicare reimbursement guidelines—concluding that allegations merely “consistent with” fraud failed to satisfy plausibility. 816 F. App’x 892, 897–900 (5th Cir. 2020). By contrast, in *Pickett v. Texas Tech Univ. Health Sciences Ctr.*, the court rejected defendants’ reliance on asserted nondiscriminatory explanations at the Rule 12(b)(6) stage, emphasizing that plausibility does not require the plaintiff’s inference to be the most likely explanation and that courts may not credit benign explanations once the complaint plausibly alleges unlawful conduct. 37 F.4th 1013, 1033–35 (5th Cir. 2022) Taken together, these cases illustrate the uncertainty within the Fifth Circuit surrounding the proper role of “obvious alternative explanations” at the pleading stage—a confusion that has led lower courts to inconsistently weigh competing inferences rather than uniformly applying Rule 12(b)(6)’s requirement that plausible allegations be accepted as true.

Across circuits, plausibility has been converted into a comparative probability inquiry. Plaintiffs are

required to plead facts sufficient to overcome defendants' asserted benign explanations before discovery.

**B. Five Circuits Correctly Hold That Rule 12(b)(6) Does Not Permit Courts to Choose Between Two Plausible Inferences**

In contrast, the Second, Seventh, Eighth, Ninth, and D.C. Circuits have consistently held that courts may not resolve factual ambiguity by choosing between competing plausible explanations at the pleading stage.

The Second Circuit, in particular, has repeatedly emphasized that Rule 12(b)(6) forbids courts from weighing inferences. In *Anderson News, L.L.C. v. American Media, Inc.*, the court reversed dismissal where the district court credited defendants' lawful explanations for their conduct and rejected the plaintiffs' anticompetitive theory, emphasizing that at the Rule 12(b)(6) stage courts must draw all reasonable inferences in the plaintiff's favor and may not dismiss merely because defendants' explanations are also plausible. 680 F.3d 162, 168, 184–85 (2d Cir. 2012).

More recently, the Second Circuit reaffirmed that courts may not assess credibility or weigh competing explanations at the pleading stage, stressing that “the test is whether the complaint is plausible, not whether it is less plausible than an alternative explanation,” and that such determinations are reserved for the jury. *Palin v. N.Y. Times Co.*, 940 F.3d 804, 812–14, 816 (2d Cir. 2019).

The D.C. Circuit has applied the same rule. In *Vote-Vets Action Fund v. Dept. of Veterans Affairs*, the court reversed a Rule 12(b)(6) dismissal, explaining that the existence of a plausible alternative explanation for the

government’s conduct—even one that might ultimately prove true—does not permit dismissal where the complaint plausibly alleges unlawful action. 992 F.3d 1097, 1104–07 (D.C. Cir. 2021). The court emphasized that it is not the judiciary’s role at the pleading stage to speculate which competing explanation will prevail after discovery. *Id.*

The Ninth Circuit has applied this principle expressly in the supervisory-liability context. The court held that a plaintiff need not negate alternative explanations for a supervisor’s inaction at the pleading stage, explaining that where both the plaintiff’s and the defendant’s explanations are plausible, the complaint survives dismissal. *Starr v. Baca*, 652 F.3d 1202, 1216–17 (9th Cir. 2011) (citing *Twombly*, 550 U.S. at 555–56). The court further explained that a supervisor’s knowledge, deliberate indifference, and acquiescence may be plausibly inferred from allegations of notice of repeated constitutional violations coupled with a failure to act. *Id.* at 1206–08, 1215–16. At the Rule 12(b)(6) stage, the court emphasized, plausibility does not require probability, and discovery—not threshold dismissal—is the mechanism for testing which explanation ultimately proves correct. *Id.* at 1216–17.

The Seventh Circuit agrees. In *Hughes v. Northwestern University*, the court reversed dismissal of ERISA claims, explaining that plausibility does not require a plaintiff to conclusively rule out alternative explanations for a defendant’s conduct and that a court’s role at the pleading stage is “to decide whether the plaintiff’s allegations are plausible—not which side’s version is more probable.” 63 F.4th 615, 629–31 (7th Cir. 2023). Where competing inferences are

reasonable, the court stressed, the complaint survives and the merits must be tested through further factual development rather than threshold dismissal.

Finally, the Eighth Circuit reversed a Rule 12(b)(6) dismissal after concluding that the district court improperly drew inferences in defendants' favor and faulted the plaintiff for failing to negate lawful explanations for the challenged conduct. *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 595–96 (8th Cir. 2009). As the court explained, “[i]t is not Braden’s responsibility to rebut these possibilities in his complaint,” and the district court erred by “finding the complaint inadequate for failing to rule out potential lawful explanations for appellees’ conduct,” including the assertion that appellees “could have chosen funds with higher fees for any number of reasons, including potential for higher return, lower financial risk, more services offered, or greater management flexibility.” *Id.* at 596. The court emphasized that Rule 8 does not require plaintiffs to plead facts rebutting every lawful explanation and that imposing such a burden would improperly convert plausibility into a probability requirement. *Id.* at 596–97.

Subsequent Eighth Circuit decisions have applied *Twombly*’s plausibility framework while reaffirming that Rule 12(b)(6) requires factual allegations sufficient to support a reasonable inference of liability, not proof or probability. See *In re Pre-Filled Propane Tank Antitrust Litigation*, 860 F.3d 1059, 1069–70 (8th Cir. 2017) (en banc) (explaining that a complaint must allege factual enhancement beyond parallel conduct or conclusory assertions, but need not establish liability at the pleading stage).

These decisions apply this Court’s pleading framework as written. When a complaint alleges facts supporting a rational inference of liability—including supervisory knowledge or ratification—the case proceeds to discovery, even if a defendant’s explanation may later prove more persuasive.

### **III. THE PRACTICE OF WEIGHING COMPETING EXPLANATIONS AT THE PLEADING STAGE EXCEEDS JUDICIAL COMPETENCE AND DISPLACES THE STRUCTURAL ROLE OF DISCOVERY AND FACT-FINDING**

#### **A. Crediting Facially Lawful Explanations at the Pleading Stage Collapses the Distinction Between Pleading, Discovery, and Fact-Finding**

The Federal Rules establish a sequence: pleading tests whether the plaintiff has stated a legally plausible claim; discovery develops the evidentiary record; summary judgment assesses whether genuine disputes of material fact remain; and trial resolves contested factual questions. Rule 12(b)(6) serves a limited and well-defined function within the architecture of the Federal Rules. It screens for legal sufficiency, not evidentiary superiority. When courts dismiss complaints by crediting a defendant’s asserted lawful explanation over a plaintiff’s plausible inference of unlawful conduct, they collapse the carefully sequenced stages of adjudication and convert plausibility review into premature fact resolution.

Courts and commentators have warned that plausibility review can be misapplied in ways that resemble summary judgment-style comparative inference analysis. *See* A. Benjamin Spencer, *Plausibility*

*Pleading*, 50 B.C. L. Rev. 431, 447 n.93 (2009) (warning that heightened scrutiny may “mov[e] forward summary judgment-like screening to the pleading phase”); *see also* Arthur R. Miller, *From Conley to Twombly to Iqbal*, 60 Duke L.J. 1, 50–53 (2010) (observing that the gatekeeping function of summary judgment risks migrating into Rule 12(b)(6)). Properly understood, plausibility is a test of legal sufficiency, not a comparative assessment of which competing factual inference is more probable. When courts choose among competing reasonable inferences at the pleading stage, they collapse the Federal Rules’ distinction between pleading and evidentiary testing.

Expanding plausibility into comparative probability review also produces perverse systemic effects. If plaintiffs must anticipate and negate defendants’ asserted benign explanations to survive dismissal, rational litigants will respond by filing increasingly lengthy and defensive complaints, attempting to plead around every conceivable lawful characterization of the conduct at issue. That is inconsistent with Rule 8’s instruction that a complaint contain a “short and plain statement” of the claim. Fed. R. Civ. P. 8(a)(2). Rather than streamlining litigation, converting plausibility into a probability requirement encourages over-pleading, multiplies motion practice, and burdens judicial dockets with precisely the kind of sprawling complaints the Federal Rules were designed to avoid.

The problem is not merely formal. At the pleading stage, courts lack the tools to evaluate the relative strength of competing factual narratives. They have no access to internal communications, no opportunity for cross-examination, no evidentiary context, and no developed factual record. Judicial experience and

common sense cannot substitute for adversarial testing where the complaint supports competing reasonable inferences. See *Twombly*, 550 U.S. at 557 (explaining that plausibility “does not impose a probability requirement at the pleading stage”).

By resolving factual ambiguity in favor of a defendant’s asserted lawful explanation, courts exceed the limited function of Rule 12(b)(6). Plausibility doctrine was designed to screen out complaints that fail to allege sufficient factual matter to support a reasonable inference of liability, not to authorize judges to weigh competing inferences and select the one that appears more benign. When lower courts adopt the latter approach, they do not merely apply plausibility pleading, they restructure it.

Preserving the distinction between legal sufficiency and factual adjudication is not a technical concern. It is essential in maintaining the integrity of the Federal Rules’ system of adjudication. Rule 12(b)(6) ensures that a complaint alleges enough to proceed. It does not authorize courts to decide which of two plausible explanations is more convincing before discovery begins.

**B. Requiring Plaintiffs to Negate Benign Explanations Before Discovery Magnifies Information Asymmetry and Undermines Uniform Federal Procedure**

The consequences of inference-weighting at the pleading stage are particularly acute in public law, civil rights, supervisory, and *Monell*-liability cases. There, evidence of intent, ratification, knowledge, and institutional motive resides almost entirely within the defendant’s control. When courts require plaintiffs to disprove asserted lawful explanations before

discovery, they transform informational asymmetry into a dispositive barrier to adjudication.

These concerns are especially acute here. Petitioner alleged that certain *de facto* policies existed at the school allowing for “social transitioning” a student’s gender without notifying the parents. The school said it was following the law. Discovering whether an unwritten policy exists is inherently difficult, and it would require examining memos, conversations, team meetings, and other sorts of ephemeral and difficult-to-obtain evidence.

This Court’s pleading jurisprudence does not impose such a burden. Rule 8 does not require plaintiffs to plead facts rebutting every conceivable lawful explanation for a defendant’s conduct. *Twombly*, 550 U.S. at 557. It does not demand that the plaintiff’s inference be the most likely explanation, nor that the complaint negate all benign alternatives.

As discussed in Part II.B, several courts of appeals have recognized that requiring plaintiffs to eliminate alternative explanations at the pleading stage would improperly convert plausibility into probability. These decisions reflect a fundamental institutional reality: in cases alleging unconstitutional motive, ratification, or deliberate indifference, the most probative evidence—internal communications, deliberative records, supervisory directives—lies within the defendant’s possession. Relevant state statutes, regulations, and guidelines may be publicly available, but the evidence for how officials interpreted and implemented guidelines is not. Requiring plaintiffs to negate defendants’ asserted benign explanations before discovery effectively demands proof without access to evidence.

Scholars have identified this dynamic as one of the central risks of expansive plausibility review. As Prof. Alexander Reinert has observed, heightened pleading burdens disadvantage plaintiffs in cases where critical facts are uniquely within the defendant's control. Alexander A. Reinert, *The Burdens of Pleading*, 162 U. Pa. L. Rev. 1767, 1780–84 (2014). When courts treat informational asymmetry as a reason to dismiss rather than as a reason to permit discovery, they invert the logic of the Federal Rules.

That dynamic produces geographic differentiation in the application of federal pleading standards. As discussed above, some circuits permit cases to proceed when competing inferences are plausible, reserving resolution for discovery and fact-finding. Others dismiss when a lawful explanation appears more persuasive at the outset. The result is that similarly pleaded complaints may survive in some jurisdictions but not others, creating significant variation in access to discovery under a rule meant to operate uniformly.

#### **IV. THE DECISION BELOW PRESENTS A CLEAN VEHICLE FOR RESOLVING WHETHER COURTS MAY CREDIT FACIALLY LAWFUL ALTERNATIVE EXPLANATIONS AT THE PLEADING STAGE**

This case arrives at the Court solely because the lower courts credited an alternative explanation over plaintiff's plausible claims at the 12(b)(6) stage. The case has not moved beyond that baseline issue, so there are no accompanying issues of fact-finding, discovery, evidence, or jurisdiction—and there are certainly no questions of standing. Thus, this case is an

excellent vehicle for this Court to resolve this recurring and important issue.

Petitioner made two main claims based on the facts alleged in the complaint: either that the school had an unwritten *de facto* policy on withholding information about gender transitioning from parents, or that the *de facto* policy exists now because the school subsequently ratified the employees' actions. Pet. at 3. The First Circuit did not hold that the theories were legally foreclosed as possible valid claims. Nor did it hold that the alleged conduct could not, as a matter of law, constitute concealment.

Instead, the First Circuit dismissed the complaint by crediting the school board's asserted explanation that its actions reflected compliance with state privacy law rather than approval of the underlying misconduct. In doing so, the court accepted the board's own characterization of its institutional intent—an assertion that it was merely interpreting state law—as dispositive at the pleading stage. That approach resolved factual ambiguity in favor of the defendant and treated a contested explanation of motive as established fact before discovery.

The decision below thus implicates the precise legal question presented in the petition. Because the First Circuit's analysis turns entirely on the application of pleading doctrine—rather than on disputed facts, evidentiary rulings, or jurisdictional defects—this case presents an especially suitable vehicle for resolving that question.

## CONCLUSION

This case presents a recurring and outcome-determinative disagreement among the courts of appeals

about how Rule 12(b)(6) applies when a defendant offers a facially lawful alternative explanation for the pleaded facts. The consequences of that division are significant.

Because Rule 12(b)(6) is a federal procedural rule, its application should not vary in a way that makes access to discovery turn on circuit geography. This case presents a clean and purely procedural vehicle for clarifying whether plausibility is a measure of legal sufficiency or a license for comparative fact-weighting at the pleading stage.

The petition should be granted.

Respectfully submitted,

Ilya Shapiro

*Counsel of Record*

Trevor Burrus

MANHATTAN INSTITUTE

52 Vanderbilt Ave.

New York, NY 10017

(212) 599-7000

ishapiro@manhattan.institute

February 23, 2026