

111TH CONGRESS
2D SESSION

S. 4054

To restore the law governing pleading and pleading motions that existed before the decisions of the Supreme Court of the United States in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).

IN THE SENATE OF THE UNITED STATES

DECEMBER 22, 2010

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To restore the law governing pleading and pleading motions that existed before the decisions of the Supreme Court of the United States in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Notice Pleading Res-
5 toration Act of 2010”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

1 (1) the decisions of the Supreme Court of the
2 United States in *Bell Atlantic Corp. v. Twombly*,
3 550 U.S. 544 (2007), decided on May 21, 2007, and
4 *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), are in-
5 consistent with—

6 (A) fundamental premises underlying the
7 Federal Rules of Civil Procedure;

8 (B) the purposes of the Federal Rules of
9 Civil Procedure;

10 (C) the previous decisions of the Supreme
11 Court interpreting those rules, including
12 *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506
13 (2002); and

14 (D) congressional expectations formed and
15 relied upon over a period of more than 70
16 years;

17 (2) the law governing pleading and pleading
18 motions should be restored to the status quo before
19 those decisions, pending thorough study by appro-
20 priate institutions through processes that are open
21 and inclusive;

22 (3) except when provided for by statute,
23 changes in the Federal Rules of Civil Procedure—

24 (A) should occur—

1 (i) through the process for formally
2 amending those rules established under
3 section 2073 of title 28, United States
4 Code;

5 (ii) under the procedures prescribed
6 by the Judicial Conference of the United
7 States; and

8 (iii) subject to prior review by Con-
9 gress under section 2074(a) of title 28,
10 United States Code; and

11 (B) should not occur through judicial deci-
12 sions;

13 (4) time is of the essence because the imposi-
14 tion of heightened pleading requirements creates the
15 risk of—

16 (A) irreparable injury to litigants who lack
17 the information or resources to comply with the
18 recent pleading decisions of the Supreme Court;
19 and

20 (B) the frustration of important public
21 policies underlying Federal statutes that the en-
22 acting Congress intended to be enforced
23 through private civil litigation;

24 (5) before May 21, 2007, some lower courts dis-
25 regarded decisions of the Supreme Court inter-

1 preting the Federal Rules of Civil Procedure relating
 2 to pleading and pleading motions, and undermined
 3 the system of notice pleading intended by those rules
 4 and decisions, by insisting on heightened pleading
 5 requirements;

6 (6) as the Supreme Court held in *Swierkiewicz*
 7 *v. Sorema N.A.*, 534 U.S. 506 (2002), and
 8 *Leatherman v. Tarrant County*, 507 U.S. 163
 9 (1993), the appropriate procedure for disposing of
 10 factually unmeritorious claims is summary judg-
 11 ment; and

12 (7) the interpretation of the Federal Rules of
 13 Civil Procedure should not be based in whole or part
 14 on the heightened standards in the Private Securi-
 15 ties Litigation Reform Act of 1995 (15 U.S.C. 77k
 16 et seq.; Public Law 104–67) or on the special cir-
 17 cumstances that prompted Congress to adopt that
 18 Act.

19 **SEC. 3. NOTICE PLEADING RESTORATION.**

20 (a) IN GENERAL.—Except as expressly provided by
 21 an Act of Congress enacted before, on, or after the date
 22 of enactment of this Act (including the Private Securities
 23 Litigation Reform Act of 1995 (15 U.S.C. 77k et seq.;
 24 Public Law 104–67) and decisions interpreting that Act)
 25 or by an amendment to the Federal Rules of Civil Proce-

1 dure effective on or after that date, the law governing a
 2 dismissal, striking, or judgment described under sub-
 3 section (b) shall be in accordance with the Federal Rules
 4 of Civil Procedure as interpreted by the Supreme Court
 5 of the United States in decisions issued before May 20,
 6 2007.

7 (b) DISMISSALS, STRIKINGS, OR JUDGMENTS.—A
 8 dismissal, striking, or judgment referred to under sub-
 9 section (a) is—

10 (1) a dismissal or striking of all or any part of
 11 a pleading containing a claim for failure to state a
 12 claim, indefiniteness, or insufficiency; or

13 (2) a judgment on the pleadings.

14 **SEC. 4. EFFECTIVE DATE.**

15 This Act take effect on the date of enactment of this
 16 Act and apply to—

17 (1) any action pending in any court of the
 18 United States on that date; and

19 (2) any action filed on or after that date.

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