

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

S. 1504

To provide that Federal courts shall not dismiss complaints under rule 12(b)(6) or (e) of the Federal Rules of Civil Procedure, except under the standards set forth by the Supreme Court of the United States in *Conley v. Gibson*, 355 U.S. 41 (1957).

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. WHITEHOUSE

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

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 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544
20 (2007), decided on May 21, 2007, and *Ashcroft v.*
21 *Iqbal*, 129 S. Ct. 1937 (2009), pending thorough
22 study by appropriate institutions through processes
23 that are open and inclusive;

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

1 (A) should occur—

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

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

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

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

14 (4) time is of the essence because of the risk
15 of—

16 (A) irreparable injury to litigants who lack
17 the information or resources to satisfy the
18 stringent pleading requirements recently adopt-
19 ed by the Supreme Court in *Bell Atlantic Corp.*
20 *v. Twombly*, 550 U.S. 544 (2007), decided on
21 May 21, 2007, and *Ashcroft v. Iqbal*, 129 S.
22 Ct. 1937 (2009); and

23 (B) frustration of important public policies
24 underlying Federal statutes that the enacting

1 Congress intended to be enforced through pri-
2 vate civil litigation;

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

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

16 **SEC. 3. NOTICE PLEADING RESTORATION.**

17 (a) IN GENERAL.—Except as expressly provided by
18 an Act of Congress enacted before, on, or after the date
19 of enactment of this Act or by an amendment to the Fed-
20 eral Rules of Civil Procedure effective on or after that
21 date, the law governing a dismissal, striking, or judgment
22 described under subsection (b) shall be in accordance with
23 the Federal Rules of Civil Procedure as interpreted by the
24 Supreme Court of the United States in decisions issued
25 before May 20, 2007, other than decisions in cases arising

1 under any law governed by the Private Securities Litiga-
2 tion Reform Act of 1995 (15 U.S.C. 77k et seq.; Public
3 Law 104–67).

4 (b) DISMISSALS, STRIKINGS, OR JUDGMENTS.—A
5 dismissal, striking, or judgment referred to under sub-
6 section (a) is—

7 (1) a dismissal or striking of all or any part of
8 a pleading containing a claim or defense for failure
9 to state a claim, indefiniteness, or insufficiency; or

10 (2) a judgment on the pleadings.

11 **SEC. 4. EFFECTIVE DATE.**

12 This Act shall take effect on the date of enactment
13 of this Act and apply to—

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

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

Amend the title so as to read: “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).”.