

No. 25-391

IN THE
Supreme Court of the United States

CITIGROUP INC.,

Petitioner,

v.

OTTO CANDIES, LLC, ET AL.,

Respondents.

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

**BRIEF FOR *AMICI CURIAE* SECURITIES
INDUSTRY AND FINANCIAL MARKETS
ASSOCIATION, CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA, AND
THE BANK POLICY INSTITUTE IN
SUPPORT OF PETITIONER**

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INTEREST OF THE AMICI CURIAE¹

The Securities Industry and Financial Markets Association (“SIFMA”) is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. SIFMA advocates on behalf of the industry’s one million employees with regard to legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed-income markets, and related issues. As part of this advocacy, SIFMA frequently files *amicus curiae* briefs in this Court.

The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in this Court.

The Bank Policy Institute (“BPI”) is a nonpartisan policy, research, and advocacy group. BPI’s members include universal banks, regional banks, and major

¹ Pursuant to this Court’s Rule 37.6, counsel for *amici curiae* certifies that no party or counsel for a party authored this brief in whole or in part. No entity, aside from *amici*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. Counsel of record received timely notice of this brief.

foreign banks doing business in the United States. BPI produces academic research and analysis on regulatory and monetary policy topics and analyzes and comments on proposed regulations. Issues of focus include consumer protection, the ability of banks to best serve their communities, bank examination, bank power, access to banking services, competition in the financial sector, and capital and liquidity regulation. An important function of BPI is to represent its members in courts. To that end, BPI regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's banking industry.

This case is deeply important to financial institutions and businesses in the United States. The decision below eviscerates a shield Congress enacted to exclude securities fraud from claims under the Racketeer Influenced and Corrupt Organizations Act ("RICO"). Congress enacted this shield because civil RICO claims had, as the SEC repeatedly warned, functionally nullified nearly all securities law regarding private suits by providing expanded remedies and lower standards of liability for the same conduct. The results of this nullification were catastrophic for both the securities industry and American businesses. *Amici* oppose a return to that era.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has long acknowledged that RICO's private cause of action "has ... evolved into something quite different from the original conception of its enactors." *Med. Marijuana, Inc. v. Horn*, 604 U.S. 593,

613 (2025). Enacted in 1970 to combat organized crime, RICO soon created a sprawling industry of suits alleging fraud in ordinary commercial disputes against legitimate businesses.

This case involves a provision Congress enacted to contain this excess in an area that has been particularly beset with vexatious litigation: securities fraud. After RICO's enactment, plaintiffs began restyling securities-fraud claims as civil RICO claims that threatened treble damages and attorney's fees. Then, as part of the Private Securities Litigation Reform Act ("PSLRA"), Congress enacted the "PSLRA bar," a broad exclusion from RICO liability for any "conduct that would have been actionable as fraud in the purchase or sale of securities." 18 U.S.C. § 1964(c). Up until now, courts have interpreted this provision to mean what it says: if *conduct* would be "actionable as [securities] fraud," it cannot be the predicate for a RICO suit.

The decision below, however, departed from this consensus and gave the provision an atextual construction that drastically narrows the protection it affords from plaintiffs' overreach. It ruled that the PSLRA bar does not apply to plaintiffs who cannot *themselves* sue under securities laws, even if the relevant "conduct ... would have been actionable as [securities] fraud," *id.*, in a suit brought by someone else.

As the petition explains, this interpretation flouts text and history. *See* Pet. Br. 11–17. And it splits with decisions from the First, Second, and Ninth Circuits, each of which has held that whether a particular plaintiff in a case could have brought suit under

securities laws is irrelevant to the PSLRA bar. *Id.* at 20–24; *infra* at 20–22. That is reason enough to grant the petition.

Amici submit this brief to emphasize two further points favoring review. *First*, the pre-PSLRA history of securities litigation under RICO demonstrates the important function of the PSLRA bar and the error in the lower court’s interpretation. For nearly a century, Congress, this Court, and the SEC have taken care—within their respective spheres of authority—to limit private securities suits. As this Court has repeatedly explained, these limits exist because claims of securities fraud are especially prone to abuse. Civil RICO, with its broad liability provisions and generous remedies, allowed plaintiffs to circumvent these limits. The flood of vexatious securities suits that followed was catastrophic for business, the judicial system, and the SEC’s ability to enforce securities laws. The PSLRA bar was enacted after sustained critiques from all three branches of government, and it restored the primacy of securities law over securities litigation.

By holding that the PSLRA bar does not apply when the limits on securities litigation would preclude suit by a given plaintiff, the decision below undoes this careful work. It reopens the floodgates to suits by private plaintiffs who, by design, could *not* sue under the securities laws, allowing plaintiffs to repackage such claims as civil RICO predicates. That is a perverse reading of the PSLRA bar. The classes of plaintiffs that the ruling below greenlights are significant. And the damage, both to securities enforcement and to public equity markets, will be as extensive as it was prior to the PSLRA bar.

Second, there is no reason to delay resolving the issue. The decision below splits with three other circuits on a pure issue of statutory interpretation. The Eleventh Circuit, which has one of the strongest prior panel precedent rules in the country and declined to resolve this issue en banc, will not change its position. And RICO’s nationwide venue provisions will allow plaintiffs to rush to the Eleventh Circuit with RICO complaints that repackage securities fraud allegations—which will both exacerbate the unpredictability and burden for companies and make it far less likely that any new circuit will address the issue.

This Court should grant the petition.

ARGUMENT

I. THE HISTORY OF CIVIL RICO AND THE PSLRA BAR HIGHLIGHT THE NEED FOR REVIEW AND THE ERROR OF THE LOWER COURT

A. The PSLRA Bar Was Enacted in the Wake of Severe Abuse by Civil RICO Plaintiffs Alleging Securities Fraud.

1. This Court has long recognized that private securities suits “present[] a danger of vexatiousness different in degree and in kind from that which accompanies litigation in general.” *Cent. Bank of Den., N.A. v. First Interstate Bank of Den., N.A.*, 511 U.S. 164, 189 (1994). The “very pendency of” a securities suit “may frustrate or delay normal business activity of the defendant” totally unrelated to the lawsuit. *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 80–81 (2006). And these suits necessarily implicate “extensive discovery of business documents” and corporate officers, exacting

further costs to litigants. *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 741 (1975); see A.C. Pritchard, *Markets as Monitors*, 85 Va. L. Rev. 925, 952–59 (1999).

The upshot is that even “plaintiffs with weak claims” in securities suits can “extort settlements from innocent companies.” *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 163 (2008). Indeed, “virtually all securities fraud claims that survive initial motions practice will be settled.” Neil Gorsuch & Paul Matey, *Settlements in Securities Fraud Class Actions: Improving Investor Protection* 31 (Wash. Legal Found. 2005).² And the costs of these settlements, as well as “ripple effects” like falling share prices, are ultimately “incurred by the company’s investors, the intended beneficiaries” of securities laws. *Cent. Bank*, 511 U.S. at 189; see Gorsuch & Matey, *supra*, at 8–9 & n.23 (collecting authority).

Accordingly, Congress, this Court, and the SEC have long understood that “[p]rivate securities fraud actions ... if not adequately contained, can be employed abusively to impose substantial costs on companies and individuals whose conduct conforms to the law.” *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551

² Between 1997 and 2024, only 0.4% of securities-fraud class-action filings (21 suits) went to trial, while nearly half of the remaining suits (46%) settled. See Stan. L. Sch. Secs. Class Action Clearinghouse & Cornerstone Res., *Securities Class Action Filings: 2024 Year in Review* 16 (2025). Because the motivation is to avoid litigation rather than an adverse judgment, “expected trial outcomes seem to have little if any influence on the settlement amount.” Janet C. Alexander, *Do the Merits Matter? A Study of Settlements in Securities Class Actions*, 43 Stan. L. Rev. 497, 596 (1991).

U.S. 308, 313 (2007). Over time, all three branches have imposed safeguards to try to contain this abuse, giving careful attention to such requirements as standing, scienter, causation, and materiality. *See, e.g.,* Arthur N. Mathews, *Shifting the Burden of Losses in the Securities Markets: The Role of Civil RICO in Securities Litigation*, 65 Notre Dame L. Rev. 896, 937 (1990).

2. For a time, RICO circumvented these safeguards on private securities enforcement. While Congress enacted RICO to combat organized crime, nothing in the statute limited suits to those defendants. Plaintiffs instead could claim RICO violations by alleging fraud related to a massive range of activity, including “in the sale of securities.” 18 U.S.C. § 1961(1). And if they prevailed, they were guaranteed treble damages and attorney’s fees. *Id.* § 1964(c).

Chief Justice Rehnquist identified the obvious implication: “Any good lawyer who can bring himself within the terms of [civil RICO’s] provisions will [use it] because of the prospect of treble damages and attorney’s fees.” William H. Rehnquist, *Remarks of the Chief Justice*, 21 St. Mary’s L.J. 5, 10 (1989). And civil RICO’s “terms,” he added, had “a tremendous reach.” *Id.* at 11.

By the early 1980s, litigants had discovered the statute’s utility, leading to “an explosion of civil RICO litigation.” *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 741 F.2d 482, 486 (2d Cir. 1984), *rev’d*, 473 U.S. 479 (1985). Securities fraud was a major catalyst, accounting for 40% of civil RICO suits by 1984. *See Sedima*, 473 U.S. at 499 n.16. As one SEC Chairman

observed, civil RICO “turned virtually every securities fraud claim into a potential RICO claim.” RICO Reform: Hearings before the Subcomm. on Criminal Justice of the H. Comm. on the Judiciary, 99th Cong. 445–46 (1985) (statement of John Shad, Chairman, SEC). And because of “the incentives that RICO provides plaintiffs, ... RICO claims in securities cases ha[d] become the rule, rather than the exception.” *Id.*

Judges chafed at civil RICO’s rise. When Chief Justice Rehnquist called for strict limits on civil RICO, one prominent jurist admitted that he “may well have been speaking for all of us.” David B. Sentelle, *Civil RICO: The Judges’ Perspective*, 12 Campbell L. Rev. 145, 146 (1990) (citing William H. Rehnquist, *Get RICO Cases Out of My Courtroom*, Wall St. J., May 19, 1989, at A-14); *see also, e.g.*, Ralph K. Winter, *Paying Lawyers, Empowering Prosecutors, and Protecting Managers*, 42 Duke L.J. 945, 978 (1993) (calling for repeal or severe limitations). Others were more colorful, deriding RICO’s generous civil remedies as a “runaway treble damage bonanza for the already excessively litigious,” *Schacht v. Brown*, 711 F.2d 1343, 1361 (7th Cir. 1983), and its capacious liability standard as “one of the most confusing crimes ever devised by the United States Congress,” *Casey v. Dep’t of State*, 980 F.2d 1472, 1477 (D.C. Cir. 1992) (Silberman, J.).

This criticism paralleled “mounting controversy” among lower courts regarding whether and how to limit RICO claims. *Dan River, Inc. v. Icahn*, 701 F.2d 278, 291 (4th Cir. 1983). Some courts, for example, required plaintiffs to prove defendants had some affiliation with organized crime or establish that they

were injured in particular ways. *See* Note, *Civil RICO*, 95 Harv. L. Rev. 1101, 1105–14 (1982).

One prominent effort at limitation was the Second Circuit’s decision in *Sedima*. 741 F.2d at 503. There, the court held that civil RICO requires establishing “criminal convictions on the underlying predicate offenses.” *Id.* at 503. Central to its decision was a refusal to impose liability when “Congress was not aware of the possible implications of” civil RICO, which were “extraordinary, if not outrageous.” *Id.* at 487, 492.

This Court reversed. *See* 473 U.S. at 493. Both the majority and dissent agreed with the Second Circuit’s factual premise—that RICO had “evolv[ed] into something quite different” than Congress expected. *Id.* at 500 (majority op.); *see id.* at 500–01 (Marshall, J., dissenting). They differed, however, on whether that mattered. According to the majority, RICO’s “correction must lie with Congress.” *Id.* at 499. Justice Marshall, speaking for himself and three others in dissent, would have limited the cause of action. *Id.* at 501. He emphasized, in particular, civil RICO’s effect on securities litigation, warning that the majority’s interpretation, which allowed civil RICO claims to proceed on nebulous allegations of mail and wire fraud, would displace the limited remedies in securities laws with treble damages and attorney’s fees. He further warned that the majority’s interpretation “virtually eliminates decades of legislative and judicial development of private civil remedies under the federal securities laws,” including on “matters such as standing, culpability, causation, reliance, and materiality.” *Id.* at 504–05.

Not surprisingly, *Sedima* further opened the floodgates to civil RICO suits. *See* Sentelle, *supra*, at 148. Opposition grew as well. The SEC called for the exclusion of securities fraud from civil RICO liability, a position it would hold across three administrations and three separate chairmen.³ The SEC warned that civil RICO was “substantially altering the balance of private and public rights and remedies under the securities laws, which Congress, the courts, and the Commission have crafted over the past 50 years.” Shad, *supra*, at 446. Indeed, “the civil RICO statute ha[d] preempted much of the field.” *Id.* at 445.

3. *Sedima*’s holding, as well as its majority and dissenting opinions, would take center stage when Congress enacted the PSLRA. In response to *Sedima*, that statute clarified that a criminal conviction was in fact required to sue for securities fraud under civil RICO: “[N]o person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation” under RICO, except that suits may proceed against “any person that is criminally convicted in connection with the fraud.” 18 U.S.C. § 1964(c).

When introducing the amendment, its author confirmed what text already made clear: Congress was acting “because [*Sedima*’s] majority said it is

³ *See* Shad, *supra*, at 446, 450; Securities Investor Protection Act of 1991: Hearings on S. 1533 Before the Subcomm. on Securities of the S. Comm. on Banking, Housing & Urban Affairs, 102nd Cong., 1st Sess. 9, 14 (1991) (statement of Richard Breeden, SEC Chairman); Common Sense Legal Reform Act: Hearings Before the Subcomm. on Telecomm. & Fin. of the H. Comm. on Commerce, 104th Cong. 196 (1995) (statement of Arthur Levitt, SEC Chairman).

really Congress’s mistake, Congress should fix it.” 141 Cong. Rec. 7142 (1995) (statement of Rep. Cox). And Justice Marshall’s dissent was repeatedly cited in support of the amendment. *See id.* at 7134–43 (liberally quoting and repeatedly emphasizing reliance on Justice Marshall’s warnings regarding the circumvention of securities law).

The amendment was effective. Courts recognized that it “removed securities fraud as a predicate act under RICO.” *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 472 (2006) (Thomas, J., concurring in part and dissenting in part). In case after case, they rejected attempts to circumvent that categorical bar. *See, e.g., Powers v. Wells Fargo Bank NA*, 439 F.3d 1043, 1045 (9th Cir. 2006) (bar applies to both individual and class actions); *Howard v. AOL Inc.*, 208 F.3d 741, 749 (9th Cir. 2000) (bar covers securities fraud claims by plaintiffs who lack standing to sue under the securities acts); *Bald Eagle Area Sch. Dist. v. Keystone Fin., Inc.*, 189 F.3d 321, 329–30 (3d Cir. 1999) (plaintiffs cannot rely on alleged wire or mail fraud “undertaken to keep a securities fraud Ponzi scheme alive”).

* * *

The story of the PSLRA bar is thus the story of how all three branches responded to the explosive combination of vexatious securities suits and civil RICO’s breadth. Civil RICO was obliterating the reticulated limits on private securities suits. When this Court recognized that civil RICO could not support a narrower interpretation, it invited Congress to resolve the issue. And Congress did. That solution was effective for decades.

B. The Eleventh Circuit’s Rule Will Open the Floodgates to Securities Fraud Claims That Should Be Barred and Burden Public Companies and Their Advisors.

In a single paragraph, the decision below unwound much of the PSLRA bar and reopened the floodgates that it had shut. It concluded that the bar does not apply when the plaintiff bringing the suit “cannot sue under the securities laws,” Pet. App. 56a, regardless of whether the “conduct ... would have been actionable as fraud in the purchase or sale of securities,” 18 U.S.C. § 1964(c). Whenever a plaintiff cannot bring a securities fraud claim because of one of the limits on securities suits imposed over the years by Congress, courts, and the SEC, that plaintiff can just turn around and sue under civil RICO, receiving the benefits of its more lenient standards and more generous remedies. This negative outcome was precisely what drew widespread opposition from leaders in all three branches of government. And for similar reasons, it is equally important for this Court to grant review to undo this perverse rule.

1. By circumventing the limits Congress, this Court, and the SEC set on securities litigation, the rule below will open the gates to a new wave of vexatious litigation. Securities laws limit private fraud claims to particular plaintiffs. Even where particular *conduct* may constitute securities fraud, that conduct is not actionable by all parties that might otherwise have Article III standing to sue. Eliminating these limits will have far-reaching consequences on securities litigation.

Consider two important exclusions in securities litigation: the purchaser/seller rule and the aiding-and-abetting bar. Both limits have been repeatedly endorsed and enforced by this Court and Congress. The first limits private civil remedies for securities fraud to purchasers and sellers. *See Blue Chip*, 421 U.S. at 735–36. Thus, plaintiffs cannot sue by alleging that they held onto or never purchased securities because of fraudulent misrepresentations or omissions regarding the security. *Id.* at 737–38. The second shields would-be defendants from aiding-and-abetting suits by private plaintiffs. *See Cent. Bank*, 511 U.S. at 178–79. That is, private plaintiffs cannot bring suit against those who purportedly “provide[] substantial assistance” to someone violating securities law. 15 U.S.C. § 78t(e).

In both cases, the *conduct* in question constitutes securities fraud, and it is actionable when brought by certain plaintiffs. The purchaser/seller rule, by definition, allows purchasers and sellers (as well as the SEC) to sue for securities fraud. *See Blue Chip*, 421 U.S. at 751 n.14. And the SEC is expressly authorized to sue for aiding-and-abetting violations. 15 U.S.C. § 78t(e). But again, many plaintiffs *cannot* sue under securities laws to complain of this same conduct—mere holders of a security, for example, or a private plaintiff with an aiding-and-abetting claim. And under the rule adopted by the First, Second, and Ninth Circuits, the PSLRA bar stops such plaintiffs from turning to civil RICO. *See infra* at 20–22. But under the Eleventh Circuit’s approach, anyone precluded by these limits can sue under civil RICO, as long as they allege that they were somehow harmed by securities disclosures.

It is hard to overstate the extent to which this distinction enlarges securities litigation. As this Court found, the demolition of the purchaser/seller rule will “broadly expand[]” securities litigation to a “vastly larger world of potential plaintiffs,” namely, “the world at large.” *Blue Chip*, 421 U.S. at 733 n.5, 741, 743. Indeed, numerous courts (including the Eleventh Circuit) held after *Sedima* that the purchaser/seller rule did not apply to limit securities fraud claims under civil RICO. *See, e.g., Warner v. Alexander Grant & Co.*, 828 F.2d 1528, 1530 (11th Cir. 1987). The PSLRA bar put an end to such RICO suits, but now the door will be open to them again. That will render the purchaser/seller rule a functional nullity—precisely the result that Justice Marshall predicted in his *Sedima* dissent and that Congress passed the PSLRA bar to avoid. *See* 473 U.S. at 505 (Marshall, J., dissenting). Indeed, the plaintiffs’ bar will be incentivized to find plaintiffs that cannot bring securities claims in order to sue under RICO, unlocking treble damages and other benefits.

Just as eliminating the purchaser/seller rule expands the pool of future *plaintiffs*, allowing suits against alleged aiders and abettors greatly expands the *defendants’* side of securities litigation, exposing “the entire marketplace” to vexatious suits. *Stoneridge*, 552 U.S. at 162. Prior to *Central Bank*, plaintiffs relied heavily on aiding-and-abetting suits. By extending liability to outside advisors on securities transactions—such as law firms, accounting firms, and experts—aiding-and-abetting liability offered plaintiffs an exponentially larger, more attractive, and more solvent range of “deep pockets” to pursue. Mathews, *supra*, at 937. Even though Congress and

this Court have since excluded these defendants from private suits under securities laws, *see* 15 U.S.C. § 78t(e); *Cent. Bank*, 511 U.S. at 180, the Eleventh Circuit’s rule makes them viable targets again under civil RICO.

Between holder claims and aiding-and-abetting suits, the decision below likely authorizes more suits than the PSLRA bar still precludes. *See Blue Chip*, 421 U.S. at 742–43 (noting that the plaintiff classes outside of purchasers and sellers are “vastly larger” than the purchaser/seller class itself). That risks a return to RICO’s “preempt[ion] of much of the field” of securities regulation. Shad, *supra*, at 445. That is an important issue worthy of this Court’s review.

2. Discarding the balances struck in securities law will also come at a tremendous economic cost. A longstanding and concerning trend in capital markets is an increasing corporate preference for foreign markets. *See, e.g.,* Craig Doidge et al., *Are There Too Few Publicly Listed Firms in the US?* 17–18 (NBER 2025); Michael R. Bloomberg & Charles E. Schumer, *Sustaining New York’s and the U.S.’ Global Financial Services Leadership* ii, 5, 12, 43–54 (2006) (collecting authorities). A material contributor to this decline is the litigation risk that publicly listed companies face in the United States relative to competitor markets. *See, e.g.,* Bloomberg & Schumer, *supra*, at 16–17. Securities suits alone have a significant effect on this competitiveness. *See, e.g.,* Jonathan Brogaard et al., *Does Shareholder Litigation Risk Cause Public Firms to Delist? Evidence from Securities Class Action Lawsuits*, 59 J. Fin. & Quant. Analysis 1726, 1754 (2024).

The dramatic expansion of eligible plaintiffs and defendants in securities litigation, as well as the availability of treble damages in these suits, will only exacerbate this trend. This Court recognized as much when imposing the very limits that the decision below unwound on the implied cause of action for securities fraud. Without the purchaser/seller rule, a new class of plaintiffs can sue, even though they “pose a special risk of vexatious litigation” above and beyond existing securities-fraud litigants. *Merrill Lynch*, 547 U.S. at 86; see *Blue Chip*, 421 U.S. at 742–43. And this new class, again, is “vastly larger” than the plaintiffs who *can* legitimately sue for securities fraud, threatening a massive increase to already material securities litigation costs. *Id.*

Similarly, as this Court has warned, expanding the class of potential defendants to alleged aiders and abettors risks expansive “ripple effects” from “uncertainty and excessive litigation.” *Cent. Bank*, 511 U.S. at 189. Most directly, “[o]verseas firms with no other exposure to [U.S.] securities laws could be deterred from doing business here,” which could “raise the cost of being a publicly traded company under [U.S.] law and shift securities offerings away from domestic capital markets.” *Stoneridge*, 552 U.S. at 164. More broadly, there will be a chilling effect on the professional advice needed to operate as a public company as advisors are placed in RICO’s crosshairs. *Cent. Bank*, 511 U.S. at 189; see, e.g., Thomas L. Gossman, The Fallacy of Expanding Accountants’ Liability, 1 Colum. Bus. L. Rev. 213, 215, 230 (1988) (discussing the “alarming[]” increase in aiding-and-abetting suits predicated on securities fraud against

accountants and the “virtual[] collapse” of the insurance market for most accounting firms).

The decision below, in sum, threatens grave consequences for the securities industry and, indeed, the national economy. This Court should grant certiorari to determine whether the law truly requires these consequences.

C. The Origin and Statutory Context of the PSLRA Bar Underscore that the Eleventh Circuit Decision is Wrong.

The Eleventh Circuit’s interpretation of the PSLRA bar cannot be defended as a matter of text or history. *See* Pet. Br. 11–19. Understanding the origin of the PSLRA and its statutory context confirms that the ruling below is erroneous.

1. Under the decision below, the PSLRA bar prevents plaintiffs with legitimate securities-law claims from using RICO, yet permits the most abusive and vexatious litigants to pursue RICO’s favorable remedies. *See Merrill Lynch*, 547 U.S. at 86 (rejecting this inference). Consider again the purchaser/seller rule and aiding-and-abetting bar. This Court has emphasized that these rules guard against especially problematic classes of securities suits.

Start with suits by non-purchasers and non-sellers. It is a statistical fact that securities suits that survive motions practice overwhelmingly settle, creating clear incentives for vexatious litigation. *See* Stan. Clearinghouse, *supra*, at 16; Gorsuch & Matey, *supra*, at 31. These incentives are even more pronounced in suits by plaintiffs alleging they did *not* take a particular action. These suits “turn largely on

which oral version of a series of occurrences the jury may decide to credit ... no matter how improbable the allegations of the plaintiff.” *Blue Chip*, 421 U.S. at 742. They are thus “virtually impossible to dispose of prior to trial other than by settlement.” *Id.*

Aiding-and-abetting liability raises similar concerns. As this Court has explained, “the rules for determining aiding and abetting liability are unclear,” creating a “shifting and highly fact-oriented” analysis for each case. *Cent. Bank*, 511 U.S. at 188. In that context, “plaintiffs with weak claims [can] extort settlements,” *Stoneridge*, 552 U.S. at 163, because “uncertainty” leads “entities subject to secondary liability as aiders and abettors ... to abandon substantial defenses and to pay settlements in order to avoid the expense and risk of going to trial,” *Cent. Bank*, 511 U.S. at 189.

The Eleventh Circuit’s approach disregards these long-recognized consequences. Indeed, this very case falls into a category—“holder” suits—that this Court has recognized “pose[s] a special risk of vexatious litigation.” *Merrill Lynch*, 547 U.S. at 86. Yet the fact that “the plaintiff bondholders [had] merely held their investments,” and so could not assert securities-law claims, was the reason that the Eleventh Circuit held their civil RICO claims were *not* subject to the PSLRA bar. *See* Pet. App. 56a. That turns the purchaser/seller rule on its head, which cannot be squared with “the particular concerns that culminated in [the PSLRA’s] enactment.” *Merrill Lynch*, 547 U.S. at 86 (refusing to interpret a related securities reform to exempt “holder” suits).

2. The decision below also missed that the PSLRA bar was enacted to override *Sedima*. *See supra* at 10–11. When “the object of [a statutory amendment] is to displace this Court’s conclusion” in a prior decision, that is an important interpretive consideration. *Young v. UPS, Inc.*, 575 U.S. 206, 246 (2015) (Scalia, J., dissenting); *accord id.* at 230–31 (majority op.) (same). And here, it weighs heavily against the decision below.

The entire point of the PSLRA bar was to reverse civil RICO’s “virtual[] eliminat[ion]” of “decades of legislative and judicial development of private civil remedies under the federal securities laws.” *Sedima*, 473 U.S. at 505 (Marshall, J., dissenting). The bar did so by reversing *Sedima*’s holding that “the fact that ... defendants have not been convicted under RICO or [predicate criminal statute] does not bar [the plaintiff’s] action.” 473 U.S. at 493 (majority op.). This “almost verbatim” correction “leav[es] no dispute that, at a minimum, [it] serves to abrogate” *Sedima*. *Rubin v. Islamic Republic of Iran*, 583 U.S. 202, 211 (2018). And yet the decision below reinstates *Sedima* for wide swaths of the least-viable plaintiffs. That makes little sense.

3. Finally, the lower court’s reading of the PSLRA bar is at odds with the PSLRA’s aiding-and-abetting provisions. As noted, the express causes of action in the securities acts excluded aiding-and-abetting liability. *See Cent. Bank*, 511 U.S. at 179. When this Court took the same approach for implied causes of action, *see id.*, some called for Congress to reinstate this form of liability for private litigants, *see* S. Rep. No. 104-98, at 19 (1995). In the PSLRA, Congress adopted a different approach, authorizing only the

SEC to sue for aiding and abetting. *See* 15 U.S.C. § 78t(e).

This Court has recognized that § 78t(e) reflected a deliberate decision to “restor[e] aiding and abetting liability in certain cases but not others.” *Stoneridge*, 552 U.S. at 163; *accord* S. Rep. No. 104-98, at 19. It has thus declined to allow theories of liability that “would revive in substance [suits] against all aiders and abettors.” *Stoneridge*, 552 U.S. at 162–63. Doing so would “undermine Congress’s determination that this class of defendants should be pursued by the SEC and not by private litigants.” *Id.* at 163.

The decision below reads the PSLRA bar—a provision enacted at the same time as § 78t(e)—to do just what this Court rejected in *Stoneridge*. According to the Eleventh Circuit’s logic, because the SEC *alone*—and not private litigants—can pursue aiders and abettors under securities laws, private litigants may now bring civil RICO claims for that exact conduct. That is a nonsensical way to read the statutory scheme. Congress would not have made a deliberate choice to limit aiding-and-abetting liability to SEC enforcement in § 78t(e), only to then allow plaintiffs to nullify that choice by bringing “in substance” the same claim (with better remedies) under civil RICO. *Stoneridge*, 552 U.S. at 162.

II. THIS COURT SHOULD RESOLVE THE CLEAR CIRCUIT SPLIT NOW.

1. The decision below clearly split with three other circuits regarding the PSLRA bar’s scope. It reversed dismissal of claims alleging that fraudulent misstatements and omissions caused the plaintiffs to continue to hold securities in a failing company. *See*

Pet. App. 7a–8a, 56a. And it did so because “‘holding’ an investment—maintaining one’s stake in company X—does not offer grounds to sue under the federal securities laws.” *Id.*

Three circuits have rejected this rationale when disallowing similar suits. In *MLSMK Investment Co. v. JP Morgan Chase & Co.*, the Second Circuit considered a plaintiff’s attempt to plead civil RICO claims based on aiding and abetting securities fraud, which the plaintiff noted “cannot serve as a basis for a private right of action.” 651 F.3d 268, 274 (2d Cir. 2011). The “determinative question” was “whether the [PSLRA] bars *all* RICO claims that would have been actionable as fraud in the purchase or sale of securities, ... or only RICO claims in cases where that plaintiff could have asserted a fraud claim against the named defendant.” *Id.* And the court held that the PSLRA bar precludes “RICO claims alleging predicate acts of securities fraud, even where a plaintiff cannot itself pursue a securities fraud action against the defendant.” *Id.* at 277. It stressed that “the plain language of the statute does not require that the same plaintiff who sues under RICO must be the one who can sue under securities laws.” *Id.*

The First Circuit reached the same result when considering a plaintiff who argued she “would not have had standing to bring [a securities suit] because she was not injured by” the alleged securities fraud. *Lerner v. Colman*, 26 F.4th 71, 78 (1st Cir. 2022). The court agreed with the Second Circuit’s “hold[ing] that” the PSLRA bar applies “even where a plaintiff cannot itself pursue a securities fraud action against the defendant.” *Id.* at 79. It added that the “bar is ... not concerned with whatever universe of conduct is

specific to the RICO plaintiff's injury, but with the broader universe of conduct that would be necessary to 'establish' the underlying violation." *Id.*

Finally, the Ninth Circuit also disagreed with plaintiffs who alleged securities fraud and argued that the PSLRA bar did "not apply because they lack standing to bring securities fraud claims." *Howard*, 208 F.3d at 749. Here too, the Ninth Circuit held that the bar applied because the "claims could be brought by a plaintiff with proper standing." *Id.*

Had any one of these decisions been previously issued by the Eleventh Circuit, it would have bound the panel below. The "determinative question" below was the same question at issue in *MLSMK, Lerner*, and *Howard*: "whether the [PSLRA] bars *all* RICO claims that would have been actionable as fraud in the purchase or sale of securities, ... or only RICO claims in cases where the plaintiff could have asserted a fraud claim against the named defendant." *MLSMK*, 651 F.3d at 274. *MLSMK, Lerner*, and *Howard* held that the former was true. The decision below held that the latter was true. There is no way to reconcile these decisions.

2. There is no reason to defer the resolution of this question. This case squarely raises the issue presented. It, like *MLSMK, Lerner*, and *Howard*, was decided at the pleading stage and turned on the meaning of the PSLRA bar.

And the circuit split is unlikely either to resolve itself or to further mature. The Eleventh Circuit adheres to a strong prior panel precedent rule, without the "erosion" that has affected the rule in other circuits. Bryan A. Garner et al., *The Law of*

Judicial Precedent 492 (2016). It brooks no exception for any “defect in the prior panel’s reasoning or analysis,” and any necessary reasoning of a prior decision broadly binds panels whenever the later holding would “necessarily mean” the prior decision “was wrong.” *United States v. Hicks*, 100 F.4th 1295, 1301 (11th Cir. 2024). The only courts that can resolve the split are the en banc Eleventh Circuit and this Court. *See id.* And the Eleventh Circuit denied petitioner’s en banc petition raising the issue. *See* C.A. En Banc Pet. 8–14. That leaves this Court.

At the same time, further percolation is both unlikely and unnecessary. It is unlikely because RICO’s unusually broad venue provision allows suit anywhere a defendant “resides, is found, has an agent, or transacts his affairs.” 18 U.S.C. § 1965(a). And securities actions are nationwide in scope, almost always involving allegations of misrepresentation in public filings related to securities listed on national exchanges. Now that the Eleventh Circuit has made it easy to circumvent the PSLRA bar, future plaintiffs will have no reason to roll the dice elsewhere. After all, they can effectively guarantee settlement by surviving motions practice in the Eleventh Circuit.

Percolation is unnecessary because the question presented raises a straightforward issue of statutory interpretation that has been fully aired in lower court decisions. The First and Second Circuits in particular addressed the PSLRA bar’s text and history at length. *See MLSMK*, 651 F.3d at 274–80; *Lerner*, 26 F.4th at 78–81. There would thus be no benefit to waiting. There will, however, be tremendous cost to every stakeholder but plaintiffs so long as the decision below stands.

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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