No. 20-1541

In The Supreme Court of the United States

PIVOTAL SOFTWARE, INC., ET AL., PETITIONERS

v.

SUPERIOR COURT OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT

BRIEF FOR PETITIONERS

ROMAN MARTINEZ
MELISSA ARBUS SHERRY
ANDREW B. CLUBOK
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Washington, DC 20004

Counsel for Petitioners Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Inc., Barclays Capital Inc., Credit Suisse Securities (USA) LLC, RBC Capital Markets, LLC, UBS Securities LLC, Wells Fargo Securities LLC, KeyBanc Capital Markets Inc., William Blair and Company, L.L.C., Mischler Financial Group, Inc., Samuel A. Ramirez & Co., Inc., Siebert Cisneros Shank & Co., LLC, and Williams Capital Group, L.P. (the latter two, Siebert Williams Shank & Co., LLC)

DEANNE E. MAYNARD
Counsel of Record
JOSEPH R. PALMORE
LENA H. HUGHES
ADAM L. SORENSEN
MORRISON & FOERSTER LLP
2100 L Street, NW
Washington, DC 20037
(202) 887-8740
dmaynard@mofo.com

JORDAN ETH
MARK R.S. FOSTER
JAMES R. SIGEL
RANDALL ZACK
KAREN LEUNG
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105

Counsel for Pivotal Software, Inc., Robert Mee, Cynthia Gaylor, Paul Maritz, Michael Dell, Zane Rowe, Egon Durban, William D. Green, Marcy S. Klevorn, and Khozema Z. Shipchandler

Counsel for Petitioners Continued on Inside Cover

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COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

ELIZABETH L. DEELEY
GAVIN M. MASUDA
JOSEPH C. HANSEN
LATHAM & WATKINS LLP
505 Montgomery Street
Suite 2000
San Francisco, CA 94111

Counsel for Petitioners Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Inc., Barclays Capital Inc., Credit Suisse Securities (USA) LLC, RBC Capital Markets, LLC, UBS Securities LLC, Wells Fargo Securities LLC, KeyBanc Capital Markets Inc., William Blair and Company, L.L.C., Mischler Financial Group, Inc., Samuel A. Ramirez & Co., Inc., Siebert Cisneros Shank & Co., LLC, and Williams Capital Group, L.P. (the latter two, Siebert Williams Shank & Co., LLC)

JOHN L. LATHAM
ANDREW T. SUMNER
ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Suite 4900
Atlanta, GA 30309

GIDON M. CAINE
ALSTON & BIRD LLP
1950 University Avenue
Suite 430
East Palo Alto, CA 94303

Counsel for Petitioner Dell Technologies Inc.

QUESTION PRESENTED

Section 77z-1(b)(1) of the Private Securities Litigation Reform Act ("Reform Act") provides:

> *In any private action arising under* [the Securities Act of 1933], all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

15 U.S.C. § 77z-1(b)(1) (emphasis added).

The question presented is:

Whether the Reform Act's discovery-stay provision applies to a private action under the Securities Act in state or federal court, or solely to a private action in federal court.

PARTIES TO THE PROCEEDING

Pursuant to Rule 24.1, Petitioners state the following:

Petitioners (defendants-petitioners below) are Pivotal Software, Inc.; Robert Mee; Cynthia Gaylor; Paul Maritz; Michael Dell; Zane Rowe; Egon Durban; William D. Green; Marcy S. Klevorn; Khozema Z. Shipchandler; Morgan Stanley & Co. LLC; Goldman Sachs & Co. LLC; Citigroup Global Markets Inc.; Merrill Lynch, Pierce, Fenner & Smith Inc.; Barclays Capital Inc.; Credit Suisse Securities (USA) LLC; RBC Capital Markets, LLC; UBS Securities LLC; Wells Fargo Securities LLC; KeyBanc Capital Markets Inc.; William Blair and Company, L.L.C.; Mischler Financial Group, Inc.; Samuel A. Ramirez & Co., Inc.; Siebert Cisneros Shank & Co., LLC; Williams Capital Group, L.P. (the latter two, Siebert Williams Shank & Co., LLC); and Dell Technologies Inc.

Respondents are Zhung Tran, Alandra Mothorpe, and Jason Hill (plaintiffs-real parties in interest below) ("Plaintiffs"), and the Superior Court for the City and County of San Francisco (respondent in the Court of Appeal).

CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement included in the petition for a writ of certiorari remains accurate.

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INTRODUCTION

In the Private Securities Litigation Reform Act, Pub. L. No. 104-67, 109 Stat. 737 (1995) (the "Reform Act"), Congress sought to curb various abuses of the federal securities laws, including the Securities Act of 1933, 15 U.S.C. § 77a, et seq. (the "Securities Act"). Congress was particularly concerned that securities plaintiffs' burdensome discovery requests would force early settlements of meritless claims, thus spurring plaintiffs to bring more meritless claims. To address this concern, Congress enacted a provision that stays discovery in "any private action arising under" the Securities Act until the plaintiffs' complaint has survived a pleading challenge. 15 U.S.C. § 77z-1(b)(1).

Plaintiffs here have brought a "private action arising under" the Securities Act. As a result, the Reform Act's discovery stay applies. This case is that simple.

Plaintiffs' attempt to evade this clear statutory language is anything but. Plaintiffs would rewrite the Reform Act's discovery stay so that instead of applying to "*any* private action arising under" the Securities Act, it applies only to *some* of them—those filed in federal court, not state court. And Plaintiffs would require courts to give that same phrase—"any private action arising under" the Securities Act—different meanings throughout the Reform Act. As Plaintiffs acknowledge (and as this Court has previously concluded), that phrase necessarily encompasses state-court actions when used elsewhere in the statute. But Plaintiffs ask

this Court to pick and choose among these provisions, applying in state court only those Reform Act provisions that are "substantive" under some unknown, *Erie*-like standard.

Plaintiffs' convoluted reading—adopted by the California trial court below—contravenes every rule of statutory interpretation. The discovery stay's expansive language plainly encompasses private Securities Act actions filed in state court. That understanding coheres with the rest of the Reform Act, which confirms that Congress knew how to limit provisions to federal courts if it wanted to. And that plain-text reading aligns with Congress's objective in enacting the discovery stay: eliminating the outcome-determinative effect that discovery so often has in Securities Act suits by coercing settlements of even meritless claims.

The orders of the California Court of Appeal and California Superior Court allowing discovery in contravention of the Reform Act should be reversed.

OPINIONS BELOW

The California Superior Court's order allowing Plaintiffs to take discovery is unreported, but reproduced at Pet. App. 1a-12a. The order of the California Court of Appeal, First Appellate District, denying Petitioners' petition for writ of mandate and accompanying stay request is unreported, but reproduced at Pet. App. 13a. The California Supreme Court's order denying Petitioners' petition for review and stay application is unreported, but reproduced at Pet. App. 14a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a) because the Court of Appeal's denial of Petitioners' writ petition (Pet. App. 13a) finally terminated a "self-contained case." *Atl. Richfield Co. v. Christian*, 140 S. Ct. 1335, 1349 (2020); *see Bandini Petrol. Co. v. Super. Ct.*, 284 U.S. 8, 14 (1931); CAL. CONST. art. 6, § 10. Given that the denial was summary, the Court "looks through" to "the last reasoned decision," which here is that of the Superior Court. *Ylst v. Nunnemaker*, 501 U.S. 797, 804 (1991) (internal quotation marks omitted); *see* Stephen M. Shapiro et al., *Supreme Court Practice* § 3.12 (11th ed. 2019). The Court also has jurisdiction to review the Superior Court's order (Pet. App. 1a-12a) because the order definitively resolved this federal issue, which is independent of any other matters remaining to be litigated, and which Petitioners cannot raise again in state court. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 480-81 (1975). The Court exercised jurisdiction under these circumstances in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, 138 S. Ct. 1061, 1068-69 (2018).

STATUTORY PROVISIONS INVOLVED

Section 77z-1(b)(1) of the Reform Act provides:

> In any private action arising under this subchapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve

> evidence or to prevent undue prejudice to that party.

15 U.S.C. § 77z-1(b)(1).

"[T]his subchapter," in turn, refers to subchapter 2A of Title 15 of the U.S. Code—that is, the Securities Act. *See* 15 U.S.C. § 77a.

Additional relevant statutory provisions are reproduced at the end of this brief.

STATEMENT

A. Statutory Framework

Congress enacted the Reform Act to combat "perceived abuses" of the federal securities laws—both the Securities Act of 1933 and the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq. (the "Exchange Act"). *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 81 (2006). Among other things, Congress augmented the sanctions for frivolous litigation, imposed a heightened pleading standard for certain claims, created a "safe harbor" for forward-looking statements, and (as directly relevant here) prohibited discovery until after the complaint has survived a motion to dismiss. *Ibid.*; *see* 15 U.S.C. § 77z-1.

Some federal securities claims—such as those under Sections 77k, 77*l*, and 77*o* of the Securities Act—may be brought in either federal or state court. *See Cyan*, 138 S. Ct. at 1066 (rejecting argument that statute subsequent to Reform Act stripped state courts of jurisdiction they previously exercised). As a result, many Reform Act provisions apply to Securities Act

claims regardless of whether they are filed in federal or state court. *Ibid*.

The discovery-stay provision at issue here provides, in relevant part:

> In *any private action arising under this subchapter*, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

15 U.S.C. § 77z-1(b)(1) (emphasis added). "[T]his subchapter" refers to the Securities Act. *See* 15 U.S.C. § 77a.[1]

B. Factual Background

Pivotal provides a "cloud-native" software platform called Pivotal Cloud Foundry that allows customers to build, deploy, and operate cloud-based software and applications. First Am. Consolidated Compl. at ¶¶ 2-3, 16, *In re Pivotal Software, Inc. Sec. Litig.*, No. CGC19576750 (Cal. Super. Ct. Jan. 15, 2021).[2] Pivotal launched its initial public offering ("IPO") in April 2018 at a price of $15 per share. *Id.* at ¶¶ 77-79. Pivotal's registration statement included a detailed

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[1] In the statute enacted by Congress (which was subsequently codified), the provision read "any private action arising under this *title*," which likewise referred to "the Securities Act of 1933." Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, §§ 101-02, 109 Stat. 737 (emphasis added).

[2] Subsequent citations to documents entered on the California Superior Court's docket are cited by title and date.

overview of Pivotal's products, business operations, and financial results, along with almost forty pages of risk disclosures. *In re Pivotal Sec. Litig.*, No. 19-cv-3589, 2020 WL 4193384, at *2 (N.D. Cal. July 21, 2020).

In August 2019, Pivotal announced a proposed merger with VMware, Inc. at $15 per share, the same price as the IPO. Stipulation and Order to Stay at 1 (Oct. 1, 2019). The merger closed at the end of 2019. *Ibid*. Stockholders who purchased stock in the IPO and held their shares through the merger thus broke even.

C. Procedural Background

After Pivotal lowered its going-forward guidance in June 2019, and before the merger, its stock price fell below the offering price. A number of plaintiffs filed putative securities class actions in federal and state courts against multiple defendants, including Pivotal, certain individuals serving as its officers and directors, and the financial institutions that underwrote Pivotal's IPO ("Underwriter Petitioners").

1. The federal-court proceedings

The federal-court cases, consolidated before Judge Charles R. Breyer in the Northern District of California, proceeded first. Among other claims, the federal plaintiffs asserted claims under the Securities Act alleging that Pivotal's registration statement, which described "cutting-edge" products in a "rapidly growing market," was false and misleading, and that it made

inadequate disclosures. *In re Pivotal Sec. Litig.*, 2020 WL 4193384, at *5-*8.

The federal district court dismissed the consolidated federal complaint for failure to state a claim. As the court explained, the federal plaintiffs had not plausibly alleged that any of the challenged statements about Pivotal's product offerings, Pivotal's competition, or risks to Pivotal's business were actually false. *In re Pivotal Securities Litig*., 2020 WL 4193384 at *6-*7. It further concluded that all claims based on statements of corporate optimism or that were forward-looking were inactionable as a matter of law, and that Pivotal had violated no applicable duty to disclose. *Id*. at *6-*8, *18-*19. Although the district court permitted amendment, the federal plaintiffs voluntarily dismissed with prejudice. Stipulation and Order to Dismiss at 2-3, *In re Pivotal Sec. Litig.*, No. 19-cv-03589-CRB (N.D. Cal. Sept. 15, 2020), ECF 104.

2. The state-court proceedings

a. Meanwhile, the Plaintiffs here had filed class actions in California Superior Court, purportedly on behalf of all those who purchased Pivotal stock in its IPO. They asserted Securities Act claims similar to those in the federal-court action. *See, e.g.*, First Am. Consolidated Compl. at ¶ 64 (Jan. 15, 2021); Am. Compl. at ¶¶ 54, 56 (Sept. 24, 2019). The state cases were consolidated. Stipulation and Order Consolidating Cases at 1-2 (Jan. 6, 2020). And during the pendency of the federal-court action, Plaintiffs voluntarily stayed the state-court action. Stipulation and Order to

Stay at 1-4 (Oct. 1, 2019); Stipulation and Order to Stay Case Management Conference at 1-5 (Feb. 10, 2020); Joint Case Management Conference Statement at 1-10 (Oct. 20, 2020).

b. In October 2020, after the federal district court had dismissed the parallel action, Plaintiffs immediately sought discovery in the state-court action—even though their complaint had not yet survived a pleading challenge. Joint Case Management Conference Statement at 7-8 (Oct. 20, 2020). In a joint case-management statement, Plaintiffs insisted that the Reform Act's discovery-stay provision, Section 77z-1(b)(1), did not apply in state court. *Ibid.* Petitioners responded that, by its plain terms, the Reform Act's discovery stay applies in both state and federal court, and they offered to brief the issue. *Id.* at 8-9.

On October 27, 2020, the trial court summarily denied Petitioners' request for a discovery stay, as well as their offer of briefing. Pet. App. 15a-16a. It also granted Plaintiffs' request for an elongated schedule for the filing of Plaintiffs' amended complaint and Petitioners' anticipated demurrer, setting a hearing for June 2021. Pet. App. 16a.[3]

Plaintiffs served their first discovery requests a few weeks later. Those requests were as broad and burdensome as they come. Plaintiffs demanded of Pivotal, among other things, "[a]ll documents and

[3] The trial court has since postponed the hearing until August 19, 2021. Order Continuing August 2, 2021 Hr'g on Dem. and Mot. to Strike (July 22, 2021).

communications related to Pivotal's product offerings," "[a]ll documents and communications distributed at, used during, created in connection with, or concerning any meeting involving any Pivotal management or executives," and "[a]ll documents and communications related to Pivotal's quarterly and annual financial and operational results and forecasts for fiscal years 2018, 2019, and 2020." Stay App. 41a-43a.[4] Plaintiffs served equally broad discovery requests on the individual Petitioners and the Underwriter Petitioners. Stay App. 30a-61a. And their discovery requests served on Dell Technologies Inc.—which Plaintiffs had belatedly added to this suit alleging vicarious-liability theories—were similarly expansive, including demanding "[a]ll documents and communications" having anything to do with the Pivotal-VMware merger. Stay App. 64a-78a.

c. In the meantime, Petitioners filed a petition for writ of mandate and request for an immediate stay with the California Court of Appeal. Although the trial court had rejected Petitioners' request to provide full briefing, the Court of Appeal denied relief because the challenged ruling was based on "the parties' summary arguments in a case management conference statement" and Petitioners "did not thoroughly present the positions urged in the present petition by way of a stay motion filed in the superior court." Pet. App. 18a. The court also stated that "the petition does not persuasively demonstrate" that Petitioners "will suffer

[4] Citations to "Stay App." refer to the appendix to the stay application Petitioners filed in this Court.

cognizable irreparable harm absent writ review." Pet. App. 18a.

d. In accordance with the Court of Appeal's order, Petitioners then filed a formal motion to stay discovery in the trial court. After the parties briefed whether the Reform Act's discovery stay applies in state court, the trial court denied the motion and allowed discovery to go forward. Pet. App. 1a-12a.

While acknowledging that Section 77z-1(b)(1) expressly states it applies to "any private action arising under" the Securities Act, the trial court concluded that the provision's lack of an express reference to state courts precluded its application in those courts. Pet. App. 5a-6a. The court also relied on other subsections of the Reform Act to conclude that the statute "is replete with procedural devices and associated federal nomenclature." Pet. App. 7a. And the court reasoned that reading the Reform Act's discovery-stay provision to apply in state court would render redundant a separate provision of the subsequently enacted Securities Litigation Uniform Standards Act of 1998 ("SLUSA") that allows a court in certain actions to stay discovery "in any private action in a State court," 15 U.S.C. § 77z-1(b)(4). Pet. App. 7a-8a. The court thus rejected Petitioners' contention that, because the SLUSA provision has broader applicability than Section 77z-1(b)(1), it would not be rendered superfluous. Pet. App. 7a-8a.

The trial court also concluded that limiting Section 77z-1(b)(1)'s discovery stay to federal court

was consistent with the provision's "procedural nature." Pet. App 9a. The court appeared to read this Court's decision in *Cyan* as requiring an assessment of whether a given Reform Act provision is "procedural" or "substantive" when determining if the provision applies in state court. Pet. App. 9a-12a.

e. Petitioners sought a writ of mandate and accompanying stay from the California Court of Appeal. Stay App. 111a-168a. On March 22, 2021, the Court of Appeal summarily denied relief without a written opinion. Pet. App. 13a.

f. Petitioners then petitioned the California Supreme Court for review, and asked for an immediate stay of the trial court's order permitting discovery. On April 14, 2021, the California Supreme Court also summarily denied relief without a written opinion. Pet. App. 14a.

3. The proceedings in this Court

Within three weeks of the California Supreme Court's denial, Petitioners filed a petition for a writ of certiorari and a stay application in this Court. Just days after Justice Kagan called for a response to the stay application, Plaintiffs suddenly realized they "do not much care" about receiving the discovery for which they had been hounding Petitioners for six months. Stay Opp. 2. They sent a letter to Pivotal's counsel stating that they would "adhere to the stay provision of 15 U.S.C. § 77z-1(b) in this matter" (Stay Opp. App. A), and argued that their unilateral concession rendered the petition for certiorari moot. Opp. 9-14.

Plaintiffs' transparent attempt to moot the controversy did not succeed. As Petitioners explained in their certiorari reply (at 9-10), Plaintiffs' unilateral promise did not satisfy their "formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000). And regardless, as Petitioners further explained (at 10-12), the controversy is justiciable (and will remain so following any ruling on Petitioners' demurrer) because the question presented is capable of repetition, yet evading review. *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). That is because an order allowing statutorily-barred discovery is necessarily short-lived, and Petitioners have a "reasonable expectation" they will "be subject to the same action again." *Ibid.* Indeed, the Underwriter Petitioners have been cumulatively sued hundreds of times in state-court Securities Act suits in just the three years since *Cyan*. Stay App. 175a-219a.

This Court granted the petition.

SUMMARY OF ARGUMENT

I. Every tool of statutory interpretation supports the same conclusion: The Reform Act's discovery stay applies in private Securities Act actions filed in both state and federal court.

Section 77z-1(b)(1)'s language is unambiguous. The discovery stay applies in "any private action arising under" the Securities Act. This language necessarily encompasses all Securities Act suits, whether filed in state or federal court. In multiple cases presenting similar circumstances, this Court has held that "any" means "any."

Section 77z-1(b)(1)'s plain meaning also comports with surrounding provisions of the Reform Act. The statute expressly states when its provisions are limited to federal-court actions, and it uses the broader "any private action" language when its provisions are not so limited.

This straightforward understanding also dovetails with Congress's purpose of eliminating unnecessary discovery costs and precluding fishing expeditions. These concerns arise in state-court Securities Act actions just as they do in federal-court actions.

II. The state-court's contrary interpretation is inconsistent with the text, structure, and purpose of the Reform Act. Neither the state court nor Plaintiffs can identify any basis for limiting Section 77z-1(b)(1) to only some Securities Act actions—*i.e.*, those brought in federal court.

A statute need not, as the state court assumed, expressly identify "state courts" to apply there. Just as this Court has repeatedly concluded about other statutory provisions with similar language, the plain language of Section 77z-1(b)(1) applies to state courts even without specifically mentioning them.

None of the other Reform Act provisions on which the state court relied supports reading a state-court exception into Section 77z-1(b)(1)'s unambiguous text. Interpreting Section 77z-1(b)(1) as written is consistent with the surrounding provisions the state court cited.

And contrary to the conclusion of the court below, *Cyan* does not condition Section 77z-1(b)(1)'s application in state court on whether the discovery stay is substantive or procedural. *Cyan* described some of the Reform Act provisions that apply in state court as "substantive," but the Court did not hold that their applicability in state court turned on that label rather than the statutory text.

Nor can Plaintiffs use the canon of constitutional avoidance to rewrite the statute to impose a federal-court limitation. The avoidance canon has no application to an unambiguous statutory provision like Section 77z-1(b)(1). And regardless, because Congress has well-established constitutional authority to regulate the means by which state courts adjudicate federal claims, Section 77z-1(b)(1) raises no constitutional concerns.

The legislative history provides no support for the state-court's interpretation, either. There is no basis for presuming that, in enacting the Reform Act, Congress was unaware that state courts exercise concurrent jurisdiction over Securities Act suits. Nor is there any reason to assume that Congress believed its restrictions on discovery—which lie at the heart of the Reform Act—were not sufficiently important to apply in state court.

ARGUMENT

I. THE REFORM ACT'S DISCOVERY STAY APPLIES TO ANY PRIVATE SECURITIES ACT ACTION WHEREVER FILED

Every tool of statutory construction shows that the Reform Act's discovery stay means what it says. It applies to "any" private Securities Act suit, whether filed in state or federal court.

A. The Plain Language Of The Discovery Stay Applies To Any Private Securities Act Action

"[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others": it must "presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). "When the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" *Id.* at 254 (citation omitted).

The discovery stay provision's language is as clear as it gets. Section 77z-1(b)(1) applies "[i]n *any private action arising under* this subchapter"—the Securities Act. 15 U.S.C. § 77z-1(b)(1) (emphasis added). As shown by its use of "arising under," the provision's scope is defined by subject matter, not venue. *See Atl. Richfield*, 140 S. Ct. at 1350 ("In the mine run of cases, '[a] suit arises under the law that creates the cause of action.'") (citation omitted). And by its terms, the provision applies not just to *some* private actions asserting Securities Act claims, but rather to "*any*" of them. *See United States v. Gonzales*, 520 U.S. 1, 5 (1997) ("[T]he word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" (quoting *Webster's Third New International Dictionary* 97 (1976))). Section 77z-1(b)(1) makes no reference to "state" or "federal" court because it applies wherever "any" action arising under the Securities Act is filed.

This Court has repeatedly held that the word "any" carries just that meaning in similar contexts. For example, in *Stewart v. Kahn*, this Court rejected the argument that a federal statute that extended the limitations period for "any action, civil or criminal" under certain conditions "was intended to be administered only in the Federal courts" and "has no application to cases pending in the courts of the States." 78 U.S. 493, 493-94, 506-07 (1870). The Court explained that "[t]he language is general" and "[t]here is nothing in it which requires or will warrant so narrow a construction." *Id.* at 506. Instead, the Court held, "[i]t lays down a rule as to the subject, and

has no reference to the tribunals by which it is to be applied." *Ibid*.

Similarly, in *Brotherhood of Railroad Trainmen v. Baltimore & O.R. Co.*, this Court was asked to hold that Section 17 of the Interstate Commerce Act, which granted a right of intervention to railroad employees' representatives "in *any* proceeding arising under this Act affecting such employees," was "confined to proceedings before the Interstate Commerce Commission, to the exclusion of court proceedings." 331 U.S. 519, 526-27 (1947) (emphasis added). The Court held that it could not "sanction such a construction of these words," as the meaning of the provision was "unmistakable on its face." *Id.* at 527, 529. The Court explained: "The proceedings mentioned are those which arise under this Act, an Act under which both judicial and administrative proceedings may arise." *Id.* at 529. "When the framers have used language which covers both types of proceedings," the Court continued, "we would be unjustified in formulating some policy which they did not see fit to express to limit that language in any way." *Id.* at 530.

Those decisions are by no means outliers: multiple decisions support the conclusion that "any" action includes actions in state courts. In *Collector of Internal Revenue v. Hubbard*, for example, the Court found it "quite clear" that a statute prohibiting the filing of suits "*in any court*" "includes the State courts as well as the Federal courts." 79 U.S. (12 Wall.) 1, 15 (1870) (emphasis in original). Similarly, in *Gonzales*, the Court held that "any other term of imprisonment"

includes "those imposed by state courts" as well as federal courts, because " 'any other term of imprisonment' 'means what it says.' " 520 U.S. at 5. And in *Adams v. Maryland*, this Court held that an evidentiary rule that applied by statute "in any criminal proceeding * * * in any court" applied "in United States courts" and "in state courts." 347 U.S. 179, 180-82 (1954). "Language could be no plainer," the Court explained, and "an ordinary person would read the phrase 'in any court' to include state courts." *Id.* at 181-82.

The same is true here. A Securities Act suit in state court is just as much a "private action arising under" the Securities Act as a Securities Act suit in federal court. The discovery-stay provision thus applies in both. There is no basis to impose a federal-court limitation that Congress "did not see fit" to include. *Brotherhood of R.R. Trainmen*, 331 U.S. at 530.

B. Surrounding Provisions Of The Reform Act Confirm The Discovery Stay's Application To State Courts

The statutory context reinforces the discovery stay's application to Securities Act actions filed in state courts. The immediately preceding statutory subsection, Section 77z-1(a), sets out requirements for notice to class members, procedures for appointment of lead plaintiffs, and limitations on recoveries by representative plaintiffs, among other things. Unlike the discovery-stay provision, Section 77z-1(a) limits its requirements to "each private action arising under this subchapter that is brought as a plaintiff class

action *pursuant to the Federal Rules of Civil Procedure.*" 15 U.S.C. § 77z-1(a) (emphasis added). Congress's decision to carve out a subset of private Securities Act actions in Section 77z-1(a) amplifies its choice not to do so in Section 77z-1(b). "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983).

In addition, Congress's use of the "any private action" language elsewhere in the Reform Act further confirms that this phrase includes state-court actions. In particular, Section 77z-2 of the Reform Act creates a "safe harbor" for forward-looking statements. 15 U.S.C. § 77z-2. This safe harbor immunity applies in "any private action arising under this subchapter"—that is, to any Securities Act action. *Id.* § 77z-2(c)(1). Section 77z-2 also contains its own discovery stay. *Id.* § 77z-2(f) (staying discovery during the pendency of a summary-judgment motion based on the safe harbor for forward-looking statements). That specific subsection likewise applies "[i]n any private action arising under" the Securities Act. *Ibid.*

In *Cyan*, this Court made clear that the "safe harbor" provision "applie[s] even when a [Securities] Act suit [is] brought in state court." 138 S. Ct. at 1066, 1072 (citing 15 U.S.C. § 77z-2). The only indication that it does so is the same one that makes Section 77z-1(b)(1)'s discovery stay applicable in state

court—it governs "any private action arising under this subchapter." *Compare* 15 U.S.C. § 77z-2(c)(1), (f), *with* 15 U.S.C. § 77z-1(b)(1). "Generally, identical words used in different parts of the same statute are * * * presumed to have the same meaning." *Robers v. United States*, 572 U.S. 639, 643 (2014) (internal quotation marks and citation omitted). Just as Section 77z-2's safe harbor applies in state court, so too does Section 77z-1(b)(1)'s discovery stay.

C. Congress's Concern With Abusive Discovery Tactics In Securities Actions Applies Equally To Securities Actions Filed In State And Federal Courts

The purpose and historical context of the Reform Act reinforce the discovery stay's application to all private Securities Act actions, including those filed in state courts. In the years preceding the Reform Act, plaintiffs had used the Securities Act to extract settlements from deep-pocketed defendants. *Merrill Lynch*, 547 U.S. at 81. Congress enacted the Reform Act because it was concerned that securities plaintiffs might "abuse * * * the discovery process to impose costs so burdensome that it is often economical for the victimized party to settle." H.R. CONF. REP. NO. 104-369, at 31 (1995). Congress also sought to prevent plaintiffs from "fil[ing] frivolous lawsuits in order to conduct discovery in the hopes of finding a sustainable claim not alleged in the complaint." S. REP. NO. 104-98, at 14 (1995). It viewed discovery during the pendency of a motion to dismiss as frequently outcome-determinative: absent a stay, "[t]he cost of discovery

often forces defendants to settle abusive securities class actions." S. REP. NO. 104-98, at 14; H.R. CONF. REP. NO. 104-369, at 37 ("The cost of discovery often forces innocent parties to settle frivolous securities class actions.").

These concerns apply equally to state and federal-court actions. *See* Michael Klausner et al., *State Section 11 Litigation in the Post-*Cyan *Environment* (*Despite* Sciabacucchi), 75 BUS. LAW. 1769, 1773 (2020) ("state courts generally allow discovery to begin before they rule on a motion to dismiss" and "[a]ll other factors being equal, an early start to discovery imposes costs on a defendant and creates pressure to settle a case before a ruling on a motion to dismiss"). There is thus no reason to think that Congress would have intended the discovery stay to apply in one forum but not the other. *See District of Columbia v. Carter*, 409 U.S. 418, 422 (1973) (law barring racial discrimination in sale or rental of property "in every State and Territory" applied in District of Columbia where "[t]he dangers of private discrimination * * * that provided a focal point of Congress' concern in enacting the legislation, were, and are, as present in the District of Columbia as in the States"). Congress intended Section 77z-1(b)(1) to do what it says: stay "all discovery" in private Securities Act actions, no matter the court in which the defendants find themselves.

Experience confirms the wisdom of Congress's choice. In the past three years alone, the Underwriter Petitioners cumulatively have been named as defendants in individual and consolidated actions under the

Securities Act in state court at least 287 times—or, counting the number of complaints filed within each individual and consolidated action, cumulatively at least 640 times. Stay App. 175a-219a. If Congress's discovery stay did not apply in state court, its objective of eliminating coercive settlements in Securities Act cases would be significantly impaired.

II. THE STATE COURT'S ATEXTUAL READING OF THE STAY PROVISION IS WRONG

According to the state court, Section 77z-1(b)(1) does not mean what it says. Rather than stay discovery in "any private action arising under" the Securities Act, the court concluded it does so only in "some" of them—those filed in federal court. But neither the state court nor the Plaintiffs can support inserting a state-court exception into Congress's discovery stay.

A. The Language Of Section 77z-1(b)(1) Cannot Support A State-Court Exception

The state court identified no ambiguity in Section 77z-1(b)(1) itself. Rather, it focused on what Section 77z-1(b)(1) does not say—as the court put it, the provision contains no express "reference to state courts." Pet. App. 6a; *see* Opp. 18-19 (same). That is no reason to read an exception for state-court litigation into Section 77z-1(b)(1)'s unambiguous text.

1. Section 77z-1(b)(1) need not expressly mention "state courts" to apply there. Such a reference would be superfluous given the provision's application to "any private action arising under" the Securities Act.

15 U.S.C. § 77z-1(b)(1). Indeed, Section 77z-1(b)(1) makes no mention of "federal courts" either. Yet it applies there for the same reason it applies in state courts—actions arising under the Securities Act may be filed in either venue. Congress had no need to use the words "federal courts" or "state courts" because the word "any" "means what it says." *Gonzales*, 520 U.S. at 5 (quotation marks omitted). As explained above, this Court has repeatedly reached that straightforward conclusion in similar cases. *Supra* pp. 16-18.

In attempting to support the state-court's contrary conclusion, Plaintiffs have relied on authority that stands largely for the irrelevant proposition that the word "any," while expansive, is not transformative. *See* Opp. 25-26. Thus, for example, if the term "defendant" does not "include third-party counterclaim defendants," the phrase "any defendant" likewise will not encompass such parties. *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1749-50 (2019); *see also*, *e.g.*, *Flora v. United States*, 362 U.S. 145, 149 (1960) (while "'any sum' is a catchall" phrase, "to say this is not to define what it catches"). Applying that logic here, Section 77z-1(b)(1)'s reference to "any private action arising under" the Securities Act cannot be understood to encompass other types of actions. But no one disputes that Plaintiffs' suit is a private action arising under the Securities Act.

Nor is *Small v. United States*—which Plaintiffs have deemed "the most analogous precedent" (Opp. 25)—to the contrary. 544 U.S. 385 (2005). There, this Court held that the statutory phrase "convicted in any

court" *included* convictions in both state and federal court. *Id.* at 391. And while *Small* deemed foreign convictions to be outside the scope of the statute, it did so because of the presumption that "Congress generally legislates with domestic concerns in mind," not to mention the absurd results and statutory anomalies that extension to foreign convictions would create. *Id.* at 388-92 (quotation marks omitted). There is no such basis for divining a state-court exception to Section 77z-1(b)(1) here. *Supra* pp. 15-24; *infra* pp. 24-47.[5]

2. In another take on their attempted defense of the state-court's interpretation of Section 77z-1(b)(1), Plaintiffs have also contended that the "question is

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[5] Plaintiffs' other cases (Opp. 25-26) are even farther afield. *United States v. Palmer* applied the presumption against extraterritoriality to limit a piracy statute to vessels or citizens under the jurisdiction of the United States. 16 U.S. (3 Wheat.) 610, 631 (1818). *Middlesex County Sewerage Authority v. National Sea Clammers Association* refused to read a savings clause preserving rights under "any statute" as authorizing an implied private right of action. 453 U.S. 1, 15-16 (1981). *Nixon v. Missouri Municipal League* held that a statute authorizing preemption of State laws "prohibiting the ability of any entity" to provide telecommunication services did not restrict a State's ability to control its own subdivisions, as a contrary reading would produce a "national crazy quilt." 541 U.S. 125, 128, 136 (2004). And *United States v. Alvarez-Sanchez* held that a statute governing the consequences of a "delay" in bringing a defendant before a federal magistrate while in the "custody of any law-enforcement officer" necessarily referred to custody for a federal charge, as only in that circumstance could there be any relevant "delay." 511 U.S. 350, 357-58 (1994). Notably, the Court recognized that the phrase "any law-enforcement officer" meant what it said, and thus encompassed "'any' law enforcement officer—federal, state, or local." *Id.* at 356, 358.

what 'courts,' not what 'actions,' must impose a stay." Opp. 24. On that basis, Plaintiffs have asserted that Section 77z-1(b)(1)'s "unelaborated reference[]" to "the court" should be understood as referring to federal courts. Opp. 21. This argument misinterprets Section 77z-1(b)(1) in two respects.

First, Plaintiffs are wrong that Section 77z-1(b)(1)'s discovery stay hinges on any action taken by the "court." Instead, Section 77z-1(b)(1) is automatic: it mandates that discovery "shall be stayed" in the category of actions to which it applies—*i.e.*, "any" private Securities Act "action." 15 U.S.C. § 77z-1(b)(1). The provision refers to the "court" only in authorizing courts in such actions to lift this automatic stay "upon the motion of any party." *Ibid*.

Second, and in any event, Section 77z-1(b)(1)'s reference to the "court" is far from "unelaborated": the "court" in question is the one presiding "[i]n any private action arising under" the Securities Act. *Ibid*. Plaintiffs do not actually dispute that—they do not argue, for instance, that the "court" refers to some court other than the one hearing the Securities Act claim. Because a state-court Securities Act suit is a "private action arising under" the Securities Act, a state court presiding over such an action may, on a proper showing, lift the automatic stay Section 77z-1(b)(1) otherwise imposes. *Ibid*. Plaintiffs can inject no ambiguity into this plain language.

3. Plaintiffs' inability to reconcile the state-court's interpretation with the text of Section 77z-1(b)(1) itself

is perhaps most clearly illustrated by their treatment of the parallel language in Section 77z-2's safe harbor. As described above (*supra* pp. 19-20), Section 77z-2's safe harbor likewise does not refer to state courts, but this Court has already concluded that it applies there. *Cyan*, 138 S. Ct. at 1066 (discussing 15 U.S.C. § 77z-2).

Attempting to justify giving the same statutory phrase two entirely different meanings, Plaintiffs have suggested that the safe harbor applies in state court because it (1) imposes no "obligation" on the court, and (2) is "substantive" rather than "procedural." Opp. 24 (emphasis omitted). Plaintiffs have not (and could not) cite any authority holding that either is a reason to disregard the Reform Act's plain text. Regardless, neither purported distinction withstands scrutiny.

As just discussed, Section 77z-1(b)(1) imposes no "obligation" on the court to stay discovery: it arises automatically, blocking any discovery that the court might otherwise have to supervise. *Supra* p. 25. If anything, it thus imposes *less* of a burden on the court than Section 77z-2's safe-harbor provision. When the safe-harbor provision is invoked, courts—whether state or federal—are the ones called upon to interpret, apply, and enforce the provision's protections. *E.g.*, *Antipodean Domestic Partners, LP v. Clovis Oncology, Inc.*, 2018 N.Y. Misc. LEXIS 1592, No. 655908/16, at *20-*28 (N.Y. Sup. Ct. Apr. 30, 2018) (parsing complaint to determine which challenged statements the safe-harbor provision protects).

The Reform Act's safe-harbor provision also contains requirements at least as "procedural" as those imposed by Section 77-1(b)(1). Most significant, just like Section 77-1(b)(1), Section 77z-2(f) stays discovery during pertinent motions. It does so using language identical in all relevant respects: "In *any private action arising under this subchapter*, the court shall stay discovery * * * during the pendency of any motion by a defendant for summary judgment" based on the safe harbor. 15 U.S.C. § 77z-2(f) (emphasis added).

Perhaps recognizing that Section 77z-2(f) dooms their arguments, Plaintiffs assert—with no support, and contrary to *Cyan*—that this particular subsection of the safe-harbor provision does not apply in state court. *Compare* Opp. 24, *with Cyan*, 138 S. Ct. at 1066 (citing Section 77z-2 as provision that applies in state court). For that to be correct, Congress would not only have had to intend the phrase "any private action arising under" the Securities Act to carry two opposing meanings in the Reform Act generally, but also to have intended that same phrase to bear different meanings across subsections of Section 77z-2 enacted simultaneously. According to Plaintiffs, "any private action" in Section 77z-2(c)(1) would mean what it says, but "any private action" in Section 77z-2(f) would mean only federal-court actions. Plaintiffs' need to adopt a reading so plainly contrary to ordinary rules of statutory interpretation (*e.g.*, *Robers*, 572 U.S. at 643) only confirms what should by now be apparent: Section 77z-1(b)(1) applies to "any" Securities Act action, just as it says it does. 15 U.S.C. § 77z-1(b)(1).

B. Surrounding Provisions Create No Ambiguity About Section 77z-1(b)(1)'s Scope

Stymied by the plain language of Section 77z-1(b)(1) itself, the state court invoked a variety of surrounding provisions. None creates ambiguity.

1. The state court, citing provisions other than Section 77z-1(b), declared that the Reform Act "consistently limits its procedural provisions to action[s] under the Federal Rules of Civil Procedure and is replete with procedural devices and associated federal nomenclature." Pet. App. 7a; *see also* Opp. 22 (pursuing similar line of attack based on Section 77z-1(a)). But that some Reform Act provisions are limited to federal court does not mean that the discovery-stay provision is as well. *See Cyan*, 138 S. Ct. at 1066-67, 1072 (explaining that some Reform Act provisions apply in state court while others do not).

Just the opposite: The fact that other Reform Act provisions are expressly limited to federal court makes clear that the discovery stay, which contains no such language, is not. Congress knew how to restrict the Reform Act's provisions to federal court when it wanted to. *See Russello*, 464 U.S. at 23. Again, had Congress intended Section 77z-1(b)(1) to apply only in federal court, it could have limited it to "each" Securities Act action brought "pursuant to the Federal Rules of Civil Procedure," much like it did in Section 77z-1(a). 15 U.S.C. § 77z-1(a)(1); *see supra* pp. 18-19. It did not.

2. The state court also invoked Section 77z-1(a)(7), contending that its reference to "State judicial action" suggests Section 77z-1(b)(1) would contain that same phrase if it applied in state court. Pet. App. 6a; *see also* Opp. 18-19 (same). That negative inference does not follow.

Section 77z-1(a)(7) requires agreements settling federal-court Securities Act class actions to inform class members about the amount of damages the parties believe could have been recovered. 15 U.S.C. § 77z-1(a)(7)(B)(i)-(ii); *see also id.* § 78u-4(a)(7)(B)(i)-(ii) (parallel provision applicable to Exchange Act actions). To ensure that these estimates are not later used against the parties, Section 77z-1(a)(7)(B)(iii) provides that the statements "concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement." *Id.* § 77z-1(a)(7)(B)(iii); *see id.* § 78u-4(a)(7)(B)(iii) (same).

The reason for this subsection's specificity is apparent: unlike Section 77z-1(b)(1)'s limitation to private actions arising under the Securities Act, Section 77z-1(a)(7)'s ban is defined by venue, not type of action. Pet. 20. Section 77z-1(a)(7) may apply to any number of different kinds of actions in which evidence of a securities class action settlement would otherwise be relevant and admissible. For that reason, the provision references the courts and other venues to which it applies, specifying each possible venue so as to remove all doubt that Congress intended to

include *all* proceedings, whether state, federal, or administrative. *Cf. Cyan*, 138 S. Ct. at 1074 ("This Court has encountered many examples of Congress legislating in that hypervigilant way, to 'remov[e] any doubt' as to things not particularly doubtful in the first instance."). Section 77z-1(b)(1), by contrast, already says everything it needs to about where it applies—that is, "in any private action arising under" the Securities Act. 15 U.S.C. § 77z-1(b)(1). Such actions have been brought in federal and state courts for decades. *Cyan*, 138 S. Ct. at 1071.

3. The state court also relied on Section 77z-1(b)(4). Pet. App. 7a-8a. Congress added this provision as part of SLUSA, three years after the Reform Act. Entitled "Circumvention of stay of discovery," it provides that "[u]pon a proper showing, a court may stay discovery proceedings in any private action in a State court as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this subsection" (*i.e.*, Section 77z-1(b)(1)). 15 U.S.C. § 77z-1(b)(4). This reference to "State court," of course, further confirms that Congress knows how to limit a provision to a particular type of court when it so chooses.

a. The state court, however, mistakenly concluded that reading the Reform Act's discovery stay to apply in state court would render this SLUSA provision "redundant." Pet. App. 7a-8a. But Section 77z-1(b)(4)'s stay authorization is broader and serves a purpose distinct from Section 77z-1(b)(1)'s discovery stay. The Reform Act's discovery stay applies only in

actions arising under the Securities Act. 15 U.S.C. § 77z-1(b)(1). The SLUSA stay provision, by contrast, allows courts in actions to which the Reform Act's discovery stay applies (*i.e.*, private Securities Act actions) to stay proceedings in "*any* private action in a State court." 15 U.S.C. § 77z-1(b)(4) (emphasis added). It thus authorizes state and federal courts adjudicating Securities Act claims to stay proceedings in, for example, related state-court cases—including those that do not arise under the Securities Act (and are not subject to the Reform Act's automatic discovery stay) because they involve only state-law claims. *See, e.g.*, *In re DPL Inc., Sec. Litig.*, 247 F. Supp.2d 946, 948-50 (S.D. Ohio 2003) (noting that this SLUSA provision applies to "discovery in '*any private action*' pending in a state court" and staying discovery in parallel state-court action involving claims under state law (emphasis in original)). In this respect, Section 77z-1(b)(4) advances SLUSA's purpose of addressing "certain vexing *state-law* class actions." *Kircher v. Putnam Funds Trust*, 547 U.S. 633, 644 n.12 (2006) (emphasis added). And the SLUSA stay provision also applies where the Reform Act's discovery stay has either expired or not been enforced.

Moreover, even if Section 77z-1(b)(4) simply duplicated Section 77z-1(b)(1)'s protections (which it does not), that would be no reason to disregard the plain meaning of Section 77z-1(b)(1). The state-court's premise was that Congress would not have enacted the SLUSA stay provision if it believed the Reform Act discovery stay already applied in state court. *See*

Pet. App. 7a-8a. Yet even if that were correct, "the view of a later Congress cannot control the interpretation of an earlier enacted statute." *O'Gilvie v. United States*, 519 U.S. 79, 90 (1996); *see United States v. Est. of Romani*, 523 U.S. 517, 536 (1998) (Scalia, J., concurring in part) ("The Constitution puts Congress in the business of writing new laws, not interpreting old ones.").

b. For their part, Plaintiffs have not attempted to defend the state-court's conclusion that a plain-text reading of Section 77z-1(b)(1) would render Section 77z-1(b)(4) superfluous. Instead, they have sought to avoid Section 77z-1(b)(1)'s plain meaning by asserting that it would render Section 77z-1(b)(4) "constitutionally dubious." Opp. 23-24. They argue that Section 77z-1(b)(4) allows any court in which Section 77z-1(b)(1)'s stay applies to enjoin proceedings in "state court," so Section 77z-1(b)(1) must be read as limited to federal courts because it would be "utterly unheard of" for Congress to allow one state court to enjoin proceedings in another. Opp. 23-24 (emphasis omitted).

Plaintiffs' contention departs from any recognized method of statutory interpretation. Section 77z-1(b)(1) is itself unambiguous and, as discussed below, poses no constitutional issue. *Infra* pp. 38-44. The provision's ordinary meaning thus controls. *See Babb v. Wilkie*, 140 S. Ct. 1168, 1177 (2020) ("[W]here, as here, the words of [a] statute are unambiguous, the judicial inquiry is complete." (internal quotation marks omitted)). That a different, later-enacted statutory provision might conceivably be unconstitutional in some

applications is no reason to ignore Section 77z-1(b)(1)'s plain terms. To the extent that a state-court's exercise of Section 77z-1(b)(4)'s stay authority could be improper in a particular case, such concerns might warrant a narrow construction of the requirement that a stay issue only "[u]pon a proper showing." 15 U.S.C. § 77z-1(b)(4). They would not justify ignoring Section 77z-1(b)(1)'s clear language.

In any event, Plaintiffs are wrong that allowing state courts to enjoin proceedings in other state courts would be cause for constitutional concern. A state court cannot enjoin proceedings in *federal* court. *Donovan v. City of Dallas*, 377 U.S. 408, 411-14 (1964). But this Court has made clear that state courts may issue antisuit injunctions restraining litigation in courts of other states. *Cole v. Cunningham*, 133 U.S. 107, 134 (1890) (affirming Massachusetts state-court injunction against prosecution of New York suit); *see, e.g.*, *Childress v. Johnson Motor Lines, Inc.*, 70 S.E.2d 558, 565 (N.C. 1952) ("an action or proceeding in another state ordinarily may be enjoined where it is made to appear that its prosecution will interfere unduly and inequitably with the progress of local litigation"); *Autonation, Inc. v. Hatfield*, 186 S.W.3d 576, 578 (Tex. Ct. App. 2005) (similar). State courts do so by exercising longstanding equitable authority to direct the conduct of the parties before them. *See Cole*, 133 U.S. at 119-20 ("When, therefore, both parties to a suit in a foreign country are resident within the territorial limits of another country, the courts of equity in the latter may act *in personam* upon those parties,

and direct them, by injunction, to proceed no further in such suit.") (quoting Joseph Story, *Commentaries on Equitable Jurisdiction* § 899 (12th ed., rev., vol. 2 1877)); *see Baker ex rel. Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 235-36 (1998).

Section 77z-1(b)(4) tracks these recognized limits without any need for Plaintiffs' departure from the statutory text. It authorizes state (and federal) courts entertaining Securities Act suits to "stay discovery proceedings" in "State court," but not in federal court, and only "[u]pon a proper showing." 15 U.S.C. § 77z-1(b)(4).

4. The state court pointed to Reform Act provisions governing "any private action arising under" the Securities Act that reference the Federal Rules of Civil Procedure. Pet. App. 7a (citing 15 U.S.C. §§ 77z-1(c)(1)-(3)). Plaintiffs likewise rely on Section 77z-1(c)(2) and also on 15 U.S.C. § 77z-1(b)(2), arguing these provisions do not apply in state court, and therefore Section 77z-1(b)(1) does not either. Opp. 22-23. Plaintiffs' premise and conclusion are both wrong.

To start, the provisions Plaintiffs cite *do* apply in state court, consistent with their coverage of any Securities Act action. Section 77z-1(c)(2) simply requires all courts to apply the *standard* set forth in Rule 11 in assessing sanctions for specified abuses. 15 U.S.C. § 77z-1(c)(2);[6] *see also id.* §§ 77z-1(c)(1), (c)(3)

[6] "If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion, the court shall impose sanctions

(similar). It is not unusual for state courts to apply Rule 11's standard even independent of Section 77-1(c)(2). *See, e.g.*, *Guillemin v. Stein*, 128 Cal. Rptr. 2d 65, 72 (Cal. Ct. App. 2002) (California "Code of Civil Procedure section 128.7 was adopted to apply rule 11 of the Federal Rules of Civil Procedure (hereinafter rule 11), as amended in 1993, to cases brought on or after January 1, 1995."). Much the same goes for Section 77z-1(b)(2), which does not (contrary to Plaintiffs' assertion) "incorporate[] the federal rules." Opp. 23. Rather, that provision merely requires the parties in a Securities Act suit to act "*as if* they were the subject of a continuing request for production" under those rules. 15 U.S.C. § 77z-1(b)(2) (emphasis added).[7]

But even if the above provisions applied solely in federal court, it would not follow that Section 77z-1(b)(1) is similarly limited. Both Section 77z-1(c)(2) and Section 77z-1(b)(2) refer to the Federal Rules of Civil Procedure. Section 77z-1(b)(1) does not. An ambiguity in whether *other* provisions apply in state court provides no license to disregard Section

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on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure." 15 U.S.C. § 77z-1(c)(2).

[7] "During the pendency of any stay of discovery pursuant to this subsection, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure." 15 U.S.C. § 77z-1(b)(2).

77z-1(b)(1)'s unambiguous command. Plaintiffs have cited nothing that comes close to demonstrating that adhering to the plain meaning of Section 77z-1(b)(1) would lead to the sort of "absurd" results that could justify their proposed departure from the statutory text. *See Carter v. United States*, 530 U.S. 255, 263 (2000) ("[Petitioner's] anomaly—even if it truly exists—is only an anomaly. Petitioner does not claim, and we tend to doubt, that it rises to the level of absurdity.").

C. The Reform Act Contains No Procedure Versus Substance Test

The state court concluded that the Reform Act's discovery stay applies only in federal court because it is "of [a] procedural nature" and not "substantive," citing this Court's decision in *Cyan*. Pet. App. 9a-10a. Plaintiffs have pressed the point, insisting that "[t]his Court unanimously read the statute to adopt" a procedure/substance "distinction in *Cyan*." Opp. 21.

Cyan did no such thing. To be sure, *Cyan* characterized some of the Reform Act provisions that are expressly limited to federal court as "procedural," and others that were not so limited as "substantive." *Cyan*, 138 S. Ct. at 1066, 1072. But this Court nowhere suggested that deciding whether a particular Reform Act provision applies in state court depends on some *Erie*-like analysis of whether that provision is "substantive" or "procedural." *Cf. Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 427 (1996) ("[c]lassification of a law as 'substantive' or 'procedural' " can be "a challenging

endeavor"). Rather, the question turns on Congress's intent—which is best reflected in the plain language of the statutory text, not some amorphous distinction between substance and procedure. As this Court has observed, "the language of an opinion is not always to be parsed as though we were dealing with language of a statute." *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979); *see also Borden v. United States*, 141 S. Ct. 1817, 1833 n.9 (2021) (plurality op.) (noting that this rule holds "most obviously true when an opinion's language revises (for easier reading) the statute's own" and that it is "[b]etter to heed the statutory language proper").

And *Cyan* itself made clear that when Congress stated in the Reform Act that a provision governed "any private action arising under" the Securities Act, Congress intended that provision to apply in state court even if it could be deemed "procedural." *See Cyan*, 138 S. Ct. at 1066, 1072. As discussed (*supra* pp. 19-20), the safe-harbor provision that *Cyan* described as substantive and applicable in state court has its own discovery stay, which likewise governs "any private action arising under" the Securities Act. 15 U.S.C. § 77z-2(f). Nothing in *Cyan* would require disregarding the language Congress actually used in the Reform Act whenever a particular provision might possibly be characterized as procedural rather than substantive.

D. The Constitutional-Avoidance Canon Has No Application Here

Plaintiffs have also advanced a variation on the state-court's distinction between substance and procedure—one the state court itself declined to embrace. They contend that Congress *cannot* regulate the procedures state courts use in adjudicating federal claims, as doing so would "effectively conscript[] the state courts in violation of the Tenth Amendment." Opp. 19. On that basis, Plaintiffs claim that to avoid constitutional concerns, this Court must read federal statutes to supplant state-court procedures only when Congress includes a "plain statement expressly referring to the state courts." Opp. 19.

Plaintiffs' invocation of the canon of constitutional avoidance is unavailing. To start, that canon "comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction." *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018) (citation omitted). Where, as here, no textual ambiguity exists, the canon "simply has no application." *Ibid.* (quotation marks omitted).

Regardless, there is no constitutional doubt to avoid. Congress's authority to establish procedures applicable in state courts is well-established—especially so where, as here, state courts exercise jurisdiction over *federal* claims. *E.g.*, *Dice v. Akron, Canton & Youngstown R.R. Co.*, 342 U.S. 359, 363 (1952). Generally speaking, states have "great latitude to establish the structure and jurisdiction of their own courts,"

and Congress may often "'take[] the state courts as it finds them.'" *Howlett ex rel. Howlett v. Rose*, 496 U.S. 356, 372 (1990). But "[f]ederal law takes state courts as it finds them only insofar as those courts employ rules that do not 'impose unnecessary burdens'" on federal rights. *Felder v. Casey*, 487 U.S. 131, 150 (1988). "[T]he obligation of states to enforce these federal laws is not lessened by reason of the form in which they are cast or the remedy which they provide." *Testa v. Katt*, 330 U.S. 386, 391 (1947). Thus, even states' "neutral procedural rules" may be "pre-empted by federal law." *Howlett*, 496 U.S. at 372.

To the extent a federal statute altering state-court procedures "conscript[s]" state courts (Opp. 19), the Constitution expressly contemplates such conscription. The Supremacy Clause, after all, provides that "the Judges in every State shall be bound [by federal law], any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST., art. VI, cl. 2. As a result, while "[f]ederal statutes enforceable in state courts do, in a sense, direct state judges to enforce them, * * * this sort of federal 'direction' of state judges is mandated by the text of the Supremacy Clause." *New York v. United States*, 505 U.S. 144, 178-79 (1992); *see Printz v. United States*, 521 U.S. 898, 928-29 (1997) (same). Simply put, "since Congress in the legitimate exercise of its powers enacts 'the supreme Law of the Land,' state courts are bound by" a federal statute "even though it affects their rules of practice." *Adams*, 347 U.S. at 183.

Congress has regularly exercised this authority. Indeed, the very first Congress enacted a statute that dictated the procedures state courts would apply in adjudicating sailors' federal right to a seaworthy ship. *See* Act for the Government and Regulation of Seamen in the Merchant Service, Pub. L. No. 1-29, § 3, 1 Stat. 132, 132 (1790). Specifically, the state judge hearing such a claim was "required to issue his precept directed to three persons in the neighbourhood, the most skilful in maritime affairs that can be procured," who would then "report to him" about any "defects and insufficiencies" in the challenged ship. *Ibid.*; *see Printz*, 521 U.S. at 908 n.2 (likening this required procedure to Federal Rule of Evidence 706's provisions for the appointment of expert witnesses).

In the more than two centuries since, Congress has continued to enact similar statutes altering the procedures applicable in state courts.[8] Even aside from Section 77z-1(b)(1)'s discovery stay, the Reform Act itself contains the separate safe-harbor discovery stay applicable in state courts, along with provisions restricting the admissibility of evidence in state-court

[8] *E.g.*, 50 U.S.C. §§ 3932, 3951(b)(1), 3952(c)(2), 3953(b), 3958(b) (providing for stays of evictions, foreclosures, stage liens, and other state-court proceedings involving military members); 15 U.S.C. §§ 6602(1)(a), 6614(a)-(b) (imposing additional pleading and class-certification requirements on state- and federal-court actions concerning "an actual or potential Y2K failure"); 2 U.S.C. §§ 1408(d)(1), 1908, 5571 (authorizing specified attorneys to "enter an appearance in any proceeding before any court of the United States or of any State or political subdivision thereof without compliance with any requirements for admission to practice before such court").

actions. *See* 15 U.S.C. §§ 77z-2(f), 77z-1(a)(7)(B)(iii); 78u-4(a)(7)(B)(iii); *supra* pp. 19-20, 29-30.

This Court has consistently affirmed Congress's power to override state-court procedures. As it has recognized, such statutes fall within Congress's authority "[t]o make all Laws which shall be necessary and proper for carrying into Execution" its enumerated powers. *Jinks v. Richland County*, 538 U.S. 456, 461 (2003) (quoting U.S. CONST., art. I, § 8, cl. 18); *see also Reina v. United States*, 364 U.S. 507, 511 (1960) (noting that "distinctions based upon the particular granted power concerned have no support in the Constitution"). This Court has done so where, as here, Congress has expressly stated its intent to dictate applicable procedures. *E.g.*, *Adams*, 347 U.S. at 180, 183 (upholding application of statute precluding admissibility of "testimony given by a witness in congressional inquiries" in "any court"); *Stewart*, 78 U.S. at 500-07 (upholding statute tolling state limitations periods for certain state-law claims affected by the Civil War).

This Court has also done so even where Congress did not expressly state any such intent—belying Plaintiffs' assertion of some sort of "plain statement" rule. Opp. 19; *see*, *e.g.*, *Felder*, 487 U.S. at 147-48 (holding preempted a state notice-of-claim procedure as applied to actions under 28 U.S.C. § 1983); *Brown v. Western Ry. of Ala.*, 338 U.S. 294, 296 (1949) (holding preempted Georgia pleading rule that construed a Federal Employer's Liability Act ("FELA") complaint against the plaintiff, explaining that it need not resolve the "troublesome question" whether such a rule

was substantive or procedural because the "federal right cannot be defeated by the forms of local practice"); *Cent. Vt. Ry. Co. v. White*, 238 U.S. 507, 512 (1915) (holding preempted state-law burden of proof in FELA cases). And in the securities context specifically, this Court has declined to narrowly construe Congress's effort to preempt the use of class-action mechanisms to pursue state-law claims, both because such a provision does not eliminate any "state cause of action," and because "federal law, not state law, has long been the principal vehicle for asserting class-action securities fraud claims." *Merrill Lynch*, 547 U.S. at 87-88 (construing SLUSA's 15 U.S.C. § 78bb(f)(1)(A)).

If any doubt as to Congress's authority exists, it concerns *state-law*, rather than federal-law, claims: this Court has not definitively resolved whether Congress can "prescribe procedural rules for state courts' adjudication of purely state-law claims." *Jinks*, 538 U.S. at 464 (reserving this question); *see Artis v. District of Columbia*, 138 S. Ct. 594, 607 (2018) (same); *id.* at 614 (Gorsuch, J., dissenting) (highlighting concern with "intrusion on the core state power to define the terms of state law claims litigated in state court proceedings"); *cf. Guillen v. Pierce Cnty.*, 31 P.3d 628, 737-42 (Wash. 2001) (en banc) (holding that limitation on use of evidence for state-law claims in state court had insufficient connection to Congress's power to regulate commerce), *rev'd on other grounds*, 537 U.S. 129 (2003). This Court has never, however, struck down a federal statute on this basis, instead deeming federal restrictions on state limitations periods as not directly

implicating any such concerns. *Artis*, 138 S. Ct. at 607 (majority op.); *Jinks*, 538 U.S. at 464-65; *but see Artis*, 138 S. Ct. at 617 (Gorsuch, J., dissenting) ("If the federal government can now, without any rational reason, force States to allow state law causes of action in state courts even though the state law limitations period expired many years ago, what exactly can't it do to override the application of state law to state claims in state court?").

No such questions remain as to Congress's authority to establish procedures for litigating federal-law claims. Even Plaintiffs acknowledge this Court's precedent confirming Congress can impose procedural requirements as "part and parcel" of the federal-law rights it creates. Opp. 19. In *Dice*, for example, this Court held that Ohio state courts must recognize the federal statutory right to a jury trial in actions under FELA, notwithstanding a state procedural rule requiring that a court decide certain factual questions. 342 U.S. at 363. Because the procedural jury requirement was a "substantial * * * part of the rights accorded by [FELA]," Ohio courts were obligated to follow it. *Ibid.* As this Court later explained, FELA "pre-empted a state rule denying a right to a jury trial" because "Congress had provided *in FELA* that the jury trial procedure was to be part of claims brought under the Act." *Johnson v. Fankell*, 520 U.S. 911, 921 n.12 (1997).

The relevant circumstances here are the same. With the Reform Act's discovery stay, Congress has cabined the cause of action it created in the Securities

Act, providing that certain restrictions on discovery are "part of claims brought under the Act." *Ibid*. Congress's limitation of the federal rights it has created, and its application of that limit to both state and federal-court actions, is entirely "necessary and proper" to "carry into effect" Congress's authority under the Commerce Clause. *Adams*, 347 U.S. at 183; *see also Merrill Lynch*, 547 U.S. at 78 ("The magnitude of the federal interest in protecting the integrity and efficient operation of the market for nationally traded securities cannot be overstated."). Just as Congress can provide that plaintiffs with FELA claims are entitled to a jury notwithstanding contrary state-court procedures (*Dice*, 342 U.S. at 363-64), so too can Congress provide that the rights the Securities Act confers on investors carry limits on discovery. Under the Supremacy Clause, state courts must adhere to this statutory restriction "even though it affects their rules of practice." *Adams*, 347 U.S. at 183.

E. No Congressional Purpose Supports The State-Court's Interpretation

No legislative history could overcome Section 77z-1(b)(1)'s clear text. Even if it could, this case presents no such conflict. Both the state court and the Plaintiffs have been unable to identify anything in the legislative history that could support limiting the Reform Act's discovery stay to federal courts.

1. The state court, citing a snippet of SLUSA's legislative history (not the Reform Act's), asserted that Congress may not have thought about state-court Securities Act actions because most such suits were

brought in federal court. Pet. App. 11a-12a. Plaintiffs echo that claim. They contend that Congress applied the Reform Act's discovery stay to "any" private Securities Act suit because Congress at the same time imposed a parallel discovery stay on "any" Exchange Act suit in Section 78u-4(b)(3)(B). Opp. 22; *see* 15 U.S.C. § 78u-4(b)(3)(B). Noting that federal courts have exclusive jurisdiction over Exchange Act suits, Plaintiffs speculate that Congress may not have considered the possibility of "state court class actions under" the Securities Act. Opp. 22.[9]

But Plaintiffs, like the state court, can identify no basis for presuming that when amending the Securities Act, Congress was somehow ignorant of its scope. Congress had granted state courts jurisdiction over such suits decades earlier, and it had even taken the further step of prohibiting the removal of such state-court suits to federal court. *Cyan*, 138 S. Ct. at 1068-69. Any (now resolved) uncertainty as to continued state-court jurisdiction arose only later, when Congress again amended the Securities Act with SLUSA. *Ibid.*; *see id.* at 1071 ("[W]hen Congress passed SLUSA, state courts had for 65 years adjudicated all manner of 1933 Act cases, including class actions."). Regardless, this Court will not "rewrite a constitutionally valid statutory text under the banner of speculation about what Congress

[9] The other purported "legislative history" on which the state court relied was not legislative history at all, but rather the minutes and materials of the Advisory Committee on Civil Rules—not Congress. Pet. App. 11a-12a; *see* Advisory Committee on Civil Rules, *Minutes* 1-31 (Apr. 28-29, 1994).

might have intended." *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2073 (2018) (internal quotation marks omitted).

2. Plaintiffs have also suggested that because Congress "impose[d] multiple procedural requirements only in federal court," it could not have intended to impose state-court discovery restrictions. Opp. 26. They assert that these federal-court-only limitations are "*much* more important to securities litigation," so, "[o]bviously," Congress left control over discovery to state courts, too. Opp. 26.

But Congress was particularly concerned with discovery—including "costs so burdensome that it is often economical for the victimized party to settle." H.R. CONF. REP. NO. 104-369, at 31. Thus, while Congress did not override all state-court procedures, it limited discovery practices it deemed abusive and likely to lead to strike settlements. That is why Congress also used the same expansive "[i]n any private action" language in the parallel provision staying discovery for claims subject to the Reform Act's safe harbor (15 U.S.C. § 77z-2(f)): Congress took special care to eliminate those discovery burdens least likely to be related to any sort of meritorious claim. *See* H.R. CONF. REP. NO. 104-369, at 32 ("This legislation implements needed procedural protections to discourage frivolous litigation. * * * It reforms discovery rules to minimize costs incurred during the pendency of a motion to dismiss or a motion for summary judgment.").

In other words, Congress did not share Plaintiffs' view of the relative importance of the Reform Act's

provisions. The statute Congress enacted should be enforced as written, with Section 77z-1(b)(1) applicable in *any* Securities Act action—whether brought in state or federal court.

CONCLUSION

The orders of the California Court of Appeal and California Superior Court should be reversed.

Respectfully submitted,

ROMAN MARTINEZ
MELISSA ARBUS SHERRY
ANDREW B. CLUBOK
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Washington, DC 20004

Counsel for Petitioners Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Inc., Barclays Capital Inc., Credit Suisse Securities (USA) LLC, RBC Capital Markets, LLC, UBS Securities LLC, Wells Fargo Securities LLC, KeyBanc Capital Markets Inc., William Blair and Company, L.L.C., Mischler Financial Group, Inc., Samuel A. Ramirez & Co., Inc., Siebert Cisneros Shank & Co., LLC, and Williams Capital Group, L.P. (the latter two, Siebert Williams Shank & Co., LLC)

DEANNE E. MAYNARD
Counsel of Record
JOSEPH R. PALMORE
LENA H. HUGHES
ADAM L. SORENSEN
MORRISON & FOERSTER LLP
2100 L Street, NW
Washington, DC 20037
(202) 887-8740
dmaynard@mofo.com

JORDAN ETH
MARK R.S. FOSTER
JAMES R. SIGEL
RANDALL ZACK
KAREN LEUNG
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105

Counsel for Pivotal Software, Inc., Robert Mee, Cynthia Gaylor, Paul Maritz, Michael Dell, Zane Rowe, Egon Durban, William D. Green, Marcy S. Klevorn, and Khozema Z. Shipchandler

Counsel for Petitioners Continued Below

AUGUST 2021

ELIZABETH L. DEELEY
GAVIN M. MASUDA
JOSEPH C. HANSEN
LATHAM & WATKINS LLP
505 Montgomery Street
Suite 2000
San Francisco, CA 94111

Counsel for Petitioners Morgan Stanley & Co. LLC, Goldman Sachs & Co. LLC, Citigroup Global Markets Inc., Merrill Lynch, Pierce, Fenner & Smith Inc., Barclays Capital Inc., Credit Suisse Securities (USA) LLC, RBC Capital Markets, LLC, UBS Securities LLC, Wells Fargo Securities LLC, KeyBanc Capital Markets Inc., William Blair and Company, L.L.C., Mischler Financial Group, Inc., Samuel A. Ramirez & Co., Inc., Siebert Cisneros Shank & Co., LLC, and Williams Capital Group, L.P. (the latter two, Siebert Williams Shank & Co., LLC)

JOHN L. LATHAM
ANDREW T. SUMNER
ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Suite 4900
Atlanta, GA 30309

GIDON M. CAINE
ALSTON & BIRD LLP
1950 University Avenue
Suite 430
East Palo Alto, CA 94303

Counsel for Petitioner Dell Technologies Inc.