No. 20-794

IN THE

Supreme Court of the United States

SERVOTRONICS, INC.,

Petitioner,

v.

ROLLS-ROYCE PLC AND THE BOEING COMPANY,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR PETITIONER

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QUESTION PRESENTED FOR REVIEW

Whether 28 U.S.C. § 1782(a), which grants the district courts discretion to render assistance in gathering evidence for use in a "foreign or international tribunal" without qualifiers or stated exceptions, should be enforced as written and thereby applied to evidence sought in connection with proceedings before foreign and international private commercial arbitral tribunals.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Servotronics, Inc. was the Petitioner-Appellant below.

Respondents Rolls-Royce PLC and The Boeing Company were Intervenors-Appellees below.

Petitioner Servotronics, Inc. hereby states that it has no parent corporation and no publicly-held company owns 10% or more of its stock.

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The Seventh Circuit's opinion is reported at 975 F.3d 689, and is reprinted as Appendix K in the Joint Appendix (JA) at 78a-93a. In the Seventh Circuit, the case was assigned Docket No. 19-1847.

The judgment of the District Court for the Northern District of Illinois is unreported. The case name is *In re Application of Servotronics, Inc., for an Order Pursuant to 28 U.S.C.* § 1782 to Take Discovery for Use in a Foreign Proceeding, Docket No. 18-cv-07187. It is available at 2019 WL 9698535, and is reprinted as Appendix J at JA 69a-77a.

JURISDICTION

The Court of Appeals for the Seventh Circuit entered its judgment on September 22, 2020. JA 78a. Servotronics petitioned this Court for a writ of certiorari on December 7, 2020 and this Court granted certiorari on March 22, 2021.

RELEVANT STATUTORY PROVISION

28 U.S.C. § 1782

§ 1782. Assistance to foreign and international tribunals and to litigants before such tribunals

Effective: February 10, 1996

(a) The district court of the district in which a person resides or is found may order him to

give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal, for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

(b) This chapter does not preclude a person within the United States from voluntarily giving his testimony or statement, or producing a document or other thing, for use in a proceeding

in a foreign or international tribunal before any person and in any manner acceptable to him.

INTRODUCTION

Section 1782 of Title 28 of the United States Code grants discretion to district courts to order persons who reside or are found within their respective judicial districts "to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal...." Nothing in the text of the statute carves out an exception for foreign or international arbitral tribunals convened by private parties to resolve commercial disputes. Indeed, the legislative history of the 1964 amendment of Section 1782 demonstrates a clear congressional intent to expand the scope of the prior version of the statute. Nonetheless, the Seventh Circuit followed the lead of the Second Circuit in grafting a limitation onto the broad, unqualified statutory language. Specifically, this judge-made exception limits application of Section 1782 to a "state-sponsored, public or quasi-governmental tribunal," a limitation that finds no support in the statutory language and has the effect of reviving, in large part, the limitations of the earlier version of the statute which Congress voted unanimously to remove. It is respectfully submitted that this Court should reverse the Seventh Circuit and apply the statute as written by holding that the discretion granted to district courts under Section 1782 to aid proceedings before foreign and international tribunals includes proceedings before foreign and international arbitral tribunals, drawing no distinction between public, governmental and quasi-governmental tribunals and those arbitral tribunals convened at the behest of private parties to hear commercial disputes.

STATEMENT OF THE CASE

A. The International Arbitration at Issue in this Case

Respondent Rolls-Royce PLC ("Rolls-Royce") and Petitioner Servotronics, Inc. ("Servotronics") are the sole parties to a commercial arbitration pending in England under the Rules of the Chartered Institute of Arbitrators. JA 16a-17a, 20a. The arbitration arose from a January 16, 2016, aircraft engine tailpipe fire that occurred during the course of Customer Demonstration and Acceptance Flight Tests at a Boeing facility in South Carolina and damaged both the engine and the aircraft. Rolls-Royce manufactured the Trent 1000 engine, which was installed on the Boeing 787-9 Dreamliner aircraft that was the subject of the flight tests. Servotronics manufactured a Metering Valve Servo Valve component of the engine. Although representatives of Boeing, Rolls-Royce, and Boeing's customer (Virgin Atlantic Airways) attended the testing, no representative of Servotronics witnessed the event. JA 21a-22a.

Rolls-Royce and its insurers reached a settlement with Boeing for the damage to the aircraft. Rolls-Royce has taken the position that it is entitled to reimbursement from Servotronics, in response to which Servotronics has cited failures on the part of Boeing and Rolls-Royce personnel to follow their own procedures for the proper response to warning signs of fuel flow issues in the engine that would have averted the fire. *Id.*

Shortly after the arbitration proceedings commenced, it became clear to Servotronics that information relevant to Servotronics' defense would not be forthcoming. Such

unresolved discovery issues prompted Servotronics to file an *ex parte* application pursuant to Section 1782 for leave to serve a document subpoena on Boeing in the Northern District of Illinois, where it is headquartered (JA 15a-16a, 23a-24a), and an application in the District of South Carolina to depose three of the eleven Boeing employees involved in the event and in Boeing's ensuing investigation (*Servotronics, Inc. v. Boeing Co.,* 954 F.3d 209, 210-11 (4th Cir. 2020)). There was no official investigation of the incident, either by the Federal Aviation Administration or the National Transportation Safety Board, and Servotronics was not a participant in the Boeing investigation or in the discussions that resulted in the settlement between Boeing and Rolls-Royce. *Id.*

After the District Court for the Northern District of Illinois granted Servotronics' application to issue a subpoena duces tecum on Boeing (JA 8a), Rolls-Royce filed a successful motion to intervene and quash the subpoena, in which Boeing joined (JA 8a, 13a). Servotronics filed a timely appeal to the Seventh Circuit (JA 13a) and, on September 22, 2020, the Seventh Circuit affirmed the order quashing the subpoena (*Servotronics, Inc. v. Rolls Royce PLC,* 975 F.3d 689 (7th Cir. 2020), JA 69a-93a).

Servotronics petitioned this Court for a writ of certiorari on December 7, 2020. After Rolls-Royce and Boeing obtained an extension of time to oppose the petition, this Court granted certiorari on March 22, 2021.

SUMMARY OF ARGUMENT

Section 1782 of Title 28 is written in clear, unambiguous language that authorizes district courts to render

assistance in gathering evidence for use in a "foreign or international tribunal…." This broad language, written without additional qualifiers or exceptions, should be applied in this case as written.

The lower courts that have taken the language of Section 1782 at face value, as is appropriate when a statute is written in unambiguous language, have held that the phrase "foreign or international tribunal" includes arbitral tribunals convened by private parties to adjudicate commercial disputes. Such rulings are consistent with both the general usage of the word "tribunal" to refer to a variety of decision-making entities, including arbitral tribunals, and longstanding judicial usage that frequently refers to arbitral bodies as tribunals. However, in contravention of the time-honored precept that courts should avoid creating exceptions that do not exist in a plainly-worded statute, the Seventh Circuit adopted a judge-made exception in this case which restricts the evidentiary assistance authorized in Section 1782 to proceedings before public, governmental or quasi-governmental tribunals.

As this Court recognized in *Intel Corp. v. Advanced Micro Devices,* 542 U.S. 241 (2004) ("*Intel*"), the 1964 amendment of Section 1782 made sweeping changes in order to broaden the scope of the statute. Congress is presumed to have intended that its amendment would have real and substantial effect. However, if left standing, the limitations the Seventh Circuit imposed in this case would diminish the effect of the 1964 amendment significantly.

Congress used the phrase "foreign or international tribunal" in Section 1782 without qualifiers and thus chose

not to make any exception to the broad rule embodied in the statute. It is respectfully submitted that Section 1782 should be applied as written and the judicially-formulated limitations imposed by the Seventh Circuit should be rejected.

ARGUMENT

A. The Unambiguous Language of Section 1782 Authorizes Judicial Assistance to All Foreign and International Tribunals, and Should be Applied as Written Without Judicially-Imposed Limitations

No single argument has more weight in statutory interpretation than the fact that the plain meaning of the words employed in a statute cover the situation at issue. *See Browder v. United States,* 312 U.S. 335, 338 (1941) (meaning of the word "use" as applied to crimes involving use of a passport obtained by false statements). *See also Schindler Elevator Corp. v. United States ex rel. Kirk,* 563 U.S. 401 (2011) (applying plain meaning of the word "report"). The text of Section 1782 provides a clear answer to the question before the Court in this case: the statute grants discretion to the district courts to render assistance in gathering evidence for use in a "foreign or international tribunal"; the word "tribunal" has long been understood to include an arbitral tribunal; and the particular arbitral tribunal involved in this case has been convened in London to hear a dispute between Rolls-Royce, a company chartered and headquartered in the United Kingdom, and Servotronics, a company incorporated and headquartered in the United States. Therefore, because this is a case of statutory construction where the language of the statute provides a clear answer

to the issue raised, the proper analysis begins and ends with the statutory language itself. *See Hughes Aircraft Co. v. Jacobson,* 525 U.S. 432, 438 (1999); *United States v. Ron Pair Enter.,* 489 U.S. 235, 241 (1989). *See also Food Mktg. Inst. v. Argus Leader Media,* __ U.S. __, 139 S. Ct. 2356, 2364 (2019) (where careful examination of the ordinary meaning and structure of the law itself yields a clear answer to a question of statutory interpretation, judges must stop); *Schindler Elevator,* 563 U.S. at 412; *Connecticut Nat'l Bank v. Germain,* 503 U.S. 249, 254 (1992) ("When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete.") (internal quotation marks omitted). Accordingly, the plain meaning of the unambiguous word "tribunal" should be regarded as conclusive in the absence of clearly-expressed congressional intent to the contrary. *See United States v. Turkette,* 452 U.S. 576, 580 (1981).

However, the Seventh Circuit's decision to follow the reasoning of *Nat'l Broadcasting Co. v. Bear Stearns & Co.,* 165 F.3d 184 (2d Cir. 1999) (*"Bear Stearns"*), turns this well-established approach to statutory construction on its head. Having been presented with "numerous references" to "court cases, international treaties, congressional statements, academic writings and even the Commentaries of Blackstone and Story" that refer to private arbitration bodies as "tribunals," the Second Circuit nonetheless concluded that this only showed the phrase "foreign or intentional tribunal" as used in Section 1782 "does not unambiguously *exclude* private arbitration panels." *Bear Stearns,* 165 F.3d at 188 (emphasis in original).

This Court has a long history of cautioning "where the Legislature makes a plain provision, without making any exception, the courts of justice can make none, as it would be legislating to do so." *Maxwell v. Moore,* 63 U.S. (1 Wall.) 185, 191 (1859). *See, e.g., Food Mktg. Inst.,* 139 S. Ct. at 2363-64 (rejecting "substantial competitive harm" test that had no basis in text of 1966 statute at issue or its legislative history);[1] *Milner v. Dep't of the Navy,* 562 U.S. 562 (2011) ("*Milner*") (rejecting judicial construction of FOIA Exemption 2 for "personnel rules and practices" that extended such exemption to any "predominantly internal" materials of a governmental agency); *Nat'l Org. for Women v. Scheidler,* 510 U.S. 249, 261 (1994) (finding no support in language of RICO statute for requiring that an "enterprise" have an economic motive); *Sedima, S.P.R.L. v. Imrex Co.,* 473 U.S. 479 (1985) (private civil RICO actions not limited to defendants who had been convicted on criminal charges and plaintiffs who had

1. The issue in *Food Marketing Institute* was whether information provided to the Food and Drug Administration by retail grocery stores was exempt from disclosure under the Freedom of Information Act ("FOIA") exception for "commercial or financial information obtained from a person and privileged or confidential." 139 S. Ct. at 2363; 5 U.S.C. § 552(b)(4). The Court noted that in a 1974 opinion the D.C. Circuit created a test that went beyond the requirements set forth in the statute in an effort to satisfy itself that non-disclosure was justified by the legislative purpose underlying the exemption. The circuit court formulated the test "after a selective tour through the legislative history" and thereafter a number of courts of appeals "fell in line" and adopted "variants" of the test. This Court could not approve "such a casual disregard of the rules of statutory interpretation." *Id.* at 2364. The exception to Section 1782 that the Second Circuit created and the Fifth and Seventh Circuits later adopted should be rejected on the same basis.

sustained "racketeering injury"); *Garcia v. United States*, 469 U.S. 70 (1984) (statute proscribing assault and robbery of any custodian of "mail matter, or of any money or other property" not limited to "postal money" or "money in the custody of postal employees" and thus applied to "flash money" belonging to the United States and entrusted to a Secret Service agent to buy counterfeit currency from defendants); *United States v. Turkette*, 452 U.S. at 586 ("neither the language nor the structure of RICO limits its application to legitimate 'enterprises.' ").

Section 1782 grants district courts discretion to render assistance in gathering information for use in a "foreign or international tribunal" without qualification or exception limiting its application to public, governmental or quasi-governmental tribunals. It is not the province of the courts to impose exceptions that Congress did not write into the statute.

B. The Plain Meaning of Foreign and International Tribunals Includes Tribunals Convened by Private Parties to Render Decisions in Commercial Arbitrations

As the Seventh Circuit acknowledged, the disagreement in this case centers on the meaning of the word "tribunal" which is modified only by the words "foreign or international" in Section 1782. 975 F.3d at 692, JA 84a. Based on the observation that some dictionaries in use in 1964 defined "tribunal" to include arbitral tribunals while others did not, the Seventh Circuit deemed the exercise of "canvassing dictionary definitions" to be inconclusive because "[i]n both common and legal parlance, the phrase 'foreign or international tribunal' can be understood to

mean only state-sponsored tribunals, but it also can be understood to include private arbitration panels." 975 F.3d at 694, JA 87a. This determination misses the mark. There is no requirement of unanimity among dictionaries in circulation to support the conclusion that a word used in a statute had a common meaning at the time of passage.[2] The fact that some dictionaries did define tribunal to include private arbitral tribunals establishes the opposite of what the Second Circuit concluded: the word "tribunal" was used to refer to private arbitral tribunals at the time Congress enacted the 1964 amendment of Section 1782. As the Sixth Circuit noted: "American jurists and lawyers have long used the word 'tribunal' in its broader sense: a sense that includes private, contracted-for commercial arbitral panels." *Abdul Latif Jameel Transp. Co. v. FedEx Corp.,* 939 F.3d 710, 720 (6th Cir. 2019) ("*FedEx*").

Moreover, this Court has used the word "tribunal" to refer to arbitral tribunals since long before the 1964 amendment of Section 1782 and continues to do so. *See, e.g., Bernhardt v. Polygraphic Co. of America,* 350 U.S. 198, 203 (1956) (referring to agreed arbitration under New York law by the American Arbitration Association when discussing the "nature of the tribunal where suits are tried"); *Louisiana v. Mississippi*, 202 U.S. 1, 50-51 (1906)

2. The dictionaries in print in 1964 confirm the common understanding that the word "tribunal" is not simply a synonym for "court" but instead had a far broader range of meanings. Indeed, one dictionary in wide general circulation in 1964 contains four definitions of "tribunal," the second of which is "a court or forum of justice; a person or body of persons having authority to hear and decide disputes so as to bind the disputants…." *Webster's New International Dictionary of the English Language* (2d ed. unabridged 1961).

("arbitration tribunal"); *North American Com. Co. v. United States,* 171 U.S. 110, 131 (1898) (referencing a treaty "extending the modus vivendi, and the action taken under it before the tribunal of arbitration"). *See also Baltimore Contractors v. Bodinger,* 348 U.S. 176, 185 (1955) (Black, J. dissenting), *overruled, Gulfstream Aerospace Corp. v. Mayacamas Corp.,* 485 U.S. 271 (1988) ("decision of whether a judicial rather than an arbitration tribunal shall hear and determine this accounting controversy is logically and practically severable from the factual and legal issues crucial to determination of the merits of the controversy."). This Court is not alone in having used the term "tribunal" to refer to arbitral tribunals, including "private, contracted-for commercial arbitrations for many years before Congress added the relevant language to § 1782(a) in 1964." *FedEx,* 939 F.3d at 721.[3]

The manner in which this Court has continued to use the term "tribunal" to refer to private arbitral tribunals underscores the shared understanding that the term does encompass arbitral tribunals, including those convened at the behest of private contracting parties. For example, in *Sherk v. Alberto-Culver Co.,* 417 U.S. 506, 519 (1974), this Court stated: "An agreement to arbitrate before a specified tribunal is, in effect, a specialized kind of forum-

3. The Sixth Circuit collected cases dating as far back as 1853 to support this statement. Among these are *Henry v. Lehigh Valley Coal Co.,* 215 Pa. 448, 64 A. 635, 636 (1906) (panel of three engineers chosen by a method prescribed by the parties' contract referred to as a special tribunal to settle their dispute); *Susong v. Jack,* 48 Tenn. 415, 416-17 (1870) (referencing the voluntary act of the parties in submitting their case to arbitration as "submitting their cause to another tribunal"); *Montgomery Cty. Comm'rs v. Carey,* 1 Ohio St. 463, 468 (1853).

selection clause that posits not only the situs of suit but also the procedure to be used in resolving the dispute."

In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985), this Court was presented with the question of whether an American court should enforce an agreement to resolve antitrust claims by arbitration when that agreement arises from an international transaction. Throughout the opinion, the Court used the terms "arbitration tribunal," "arbitral tribunal" and the unmodified word "tribunal" interchangeably. Furthermore, the Court concluded that:

> concerns of international comity, respect for the capacities of foreign and transnational tribunals, and sensitivity to the needs of the international commercial system for predictability in the resolution of disputes require that we enforce the parties' [arbitration] agreement, even assuming a contrary result would be forthcoming in a domestic context.

473 U.S. at 629.

Thus, not only does this Court have a long history of using the word "tribunal" to refer to arbitral tribunals, but the Court has regarded foreign and transnational arbitral tribunals that have been convened at the behest of private parties to commercial contracts as tribunals that are due the same types of consideration afforded to foreign and international governmental and quasi-governmental tribunals. As a result, the Seventh Circuit's conclusion that foreign and international arbitral tribunals that decide commercial disputes pursuant to contractual

arrangements between or among the parties appearing before them are excluded from the purview of Section 1782 contravenes the language and intention of that statute and is at odds with the views of such tribunals that have been expressed by this Court.

C. The Limitation the Seventh Circuit Grafted Onto Section 1782 Contravenes Both the Clear Language of the Statute and the Intent Expressed by Its Legislative History

To the extent the Court deems it appropriate to examine the legislative history of Section 1782, the thorough analysis undertaken in *Intel,* 542 U.S. 241,[4] serves as an authoritative guide.

In *Intel,* the Court noted the continuum over which Congress repeatedly expanded the scope of the assistance federal courts have been authorized to provide for gathering evidence to be used in foreign proceedings. Before Section 1782 was enacted in 1948, such authorization was limited to circuit courts appointing commissioners to examine witnesses in response to letters rogatory from foreign courts forwarded through diplomatic channels, but only for cases in which a foreign government was a party or had an interest. Section 1782,

4. *Intel,* the only other case in which this Court addressed applicability of Section 1782, arose out of a request for discovery in aid of an antitrust proceeding before the Commission of European Communities. As a result, the Court had no occasion to address the conclusions reached in *Bear Stearns* or the decision electing to follow *Bear Stearns* which was rendered two months later, *Republic of Kazakhstan v. Biedermann Int'l,* 168 F.3d 880 (5th Cir. 1999).

in its original 1948 form, eliminated the governmental party or interest restriction and allowed district courts to designate persons to preside at depositions to be used in "any civil action pending" in any court in a foreign country with which the United States is at peace. The next year, Congress further broadened the scope of Section 1782 by substituting "judicial proceeding" for "civil action." 542 U.S. at 247-48.

In 1958, prompted by the growth of international commerce, Congress created the Commission on International Rules of Judicial Procedure. Six years later, in 1964, Congress unanimously adopted the Commission's recommended legislation and made a "complete revision of § 1782." *Id.* at 248. As recast and expanded by the 1964 amendment, Section 1782's provision for assistance in obtaining documentary and other tangible evidence as well as testimony "in any judicial proceeding pending in any court in a foreign country" was replaced with "a proceeding in a foreign or international tribunal," thus eliminating the words "judicial," "court" and "pending." *Id.* at 248-49. The *Intel* Court noted that the accompanying Senate Report "explains that Congress introduced the word 'tribunal' to ensure that assistance is not confined to proceedings before conventional courts, but extends also to administrative and quasi-judicial proceedings." *Id.* at 249 (internal quotation marks omitted).

Professor Hans Smit, at the time Director of the Project on International Procedure at Columbia Law School, has been called the "dominant drafter" of the 1964 amendment. *See In re Letter of Request from the Crown Prosecution Serv.*, 870 F.2d 686, 689 (D.C. Cir. 1989). Congress accepted all of Professor Smit's suggestions

and the Commission's proposed legislative reforms resulting in the current 28 U.S.C. § 1782. *Id.* According to Professor Smit, the word "tribunal" as used in Section 1782 "includes investigating magistrates, administrative and arbitral tribunals, and quasi-judicial agencies, as well as conventional, civil, commercial, criminal, and administrative courts." Hans Smit, *International Litigation Under the United States Code,* 65 COLUM. L. REV. 1015, 1026-27 and nn. 71 & 73 (1965).[5] In a subsequent article, Professor Smit elaborated, stating: "Clearly, private arbitral tribunals come within the term the drafters used." Hans Smit, *American Assistance to Litigation in Foreign and International Tribunals: Section 1782 of Title 28 of the U.S.C. Revisited,* 25 SYRACUSE J. INT'L L. & COMM. 1, 5 (Spring 1998).

Thus, the *Intel* Court recognized that a broad interpretation of Section 1782 is consistent with the statute's evolution and contemporaneous expressions of congressional intent. 542 U.S. at 257-58. In this regard, the Court concluded that the legislative history of the 1964 revision "reflects Congress' recognition that judicial assistance would be available whether the foreign or international proceeding or investigation is of a criminal, civil, administrative or other nature." 542 U.S. at 259 (internal quotation marks and emphasis omitted).

Following the *Intel* analysis, the Fourth and Sixth Circuit Courts of Appeals held that Section 1782 permits

5. Section 1782 was last amended in 1996 with a reference to "including criminal investigations conducted before formal accusation" after the reference to foreign and international tribunals. *Intel,* 542 U.S. at 249.

district courts to render evidence-gathering assistance for use in private commercial arbitrations.[6] *Servotronics, Inc. v. Boeing Co.,* 954 F.3d 209 (4th Cir. 2020); *FedEx,* 939 F.3d at 721.[7] In deciding that the district court is authorized to assist Servotronics in obtaining testimony for use in the same international arbitration underlying the present case, the Fourth Circuit observed that the current version of Section 1782, as amended in 1964 "manifests Congress' policy to increase international cooperation by providing U.S. assistance in resolving disputes before not only foreign *courts* but before all foreign and international *tribunals*." 954 F.3d at 213 (emphasis in original). However, the Court of Appeals for the Seventh Circuit joined the Second and Fifth Circuits in reading a judge-made restriction into the broad, unqualified language of Section 1782[8] that Congress adopted by unanimous vote

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6. A number of district courts reached similar conclusions. *See, e.g., In re Babcock Borsig AG,* 583 F. Supp. 2d 233, 239 (D. Mass. 2008); *In re Hallmark Cap. Corp.,* 534 F. Supp. 2d 951, 955 (D. Minn. 2007); *In re Roz Trading Ltd.,* 469 F. Supp. 2d 1221, 1228 (N.D. Ga. 2006).

7. In 2012, the Eleventh Circuit relied on the reasoning in *Intel* and found that the word "tribunal" as used in Section 1782 includes a private arbitral tribunal and thus empowered the district court to render assistance to such a tribunal convened in Ecuador. However, the court vacated its opinion two years later when new issues were presented that related to a contemplated foreign civil action rather than an arbitration. *See Consorcio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.,* 685 F.3d 987, 994-95 (11th Cir. 2012), *vacated and superseded,* 747 F.3d 1262 (11th Cir. 2014).

8. In *Hanwei Guo v. Deutsche Bank Sec.,* 965 F.3d 96 (2d Cir. 2020), the Second Circuit reaffirmed its pre-*Intel* position that Section 1782 does not apply to private arbitral tribunals

when it amended the statute in 1964. *See Intel,* 542 U.S. at 248.

The previous version of Section 1782 permitted assistance in judicial proceedings pending in a foreign country. Had Congress intended to make only an incremental increase in the scope of Section 1782, it could have employed qualifiers for the word "tribunal" that would have confined the application of the statute to proceedings before governmental or quasi-governmental tribunals in foreign countries. Congress, which did not write such limitations into the 1964 version of Section 1782, is presumed to have intended such amendment "to have real and substantial effect." *See Intel,* 542 U.S. at 243. *See also United States v. Quality Stores, Inc.,* 572 U.S. 141, 148 (2014); *Stone v. Immigration and Naturalization Serv.,* 514 U.S. 386, 397 (1995). However, the limitation that the Second Circuit engrafted on Section 1782 in *Bear Stearns*, and the Seventh Circuit adopted in this case (975 F.3d at 692-93, JA 86a) would nullify much of the 1964 amendment.

Preserving the real and substantial effect of an amendment to FOIA was at issue in *Milner*, where this Court stated that it "would ill-serve Congress's purpose by construing Exemption 2 to reauthorize the expansive withholding that Congress wanted to halt. Our reading instead gives the exemption the 'narrow reach' Congress intended, [citation omitted], through the simple device of confining the provision to its words." 562 U.S. at 571-

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and the Fifth Circuit took a similar stance in *El Paso Corp. v. La Comision Ejecutiva Hidroelectrica del Rio Lempa,* 341 Fed. App'x 31 (5th Circ. 2009).

72.[9] *See also Pierce Cty., Washington v. Guillen,* 537 U.S. 129, 145 (2003) (declining to adopt respondent's narrow statutory interpretation that "would protect from disclosure only information that was already protected before the amendment" and thus render such amendments "an exercise in futility."). The only way to preserve the real and substantial effect intended by the 1964 amendment of Section 1782 is to apply its broad language as written and reject judicially-devised limitations.

D. Neither the Breadth of the Statutory Language Nor the Speculation that Congress May Not Have Foreseen All Potential Applications Justifies Refusal to Give Effect to the Plain Meaning of Section 1782

The Second Circuit cited the "absence of any reference to private dispute resolution proceedings such as arbitration" in the legislative history as "strongly suggest[ing] that Congress did not consider them in drafting the statute." *Bear Stearns,* 165 F.3d at 189. However, "if Congress has made a choice of language, which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators." *Barr v. United States,* 324 U.S. 83, 90 (1945). *See also Union Bank v. Wolas,* 502 U.S. 151, 158 (1991) (that Congress may not have foreseen all of the consequences of a statutory enactment is not a sufficient reason for refusing to give

9. Accordingly, the Court held that the meaning of the term "personnel rules and practices," encompasses only records relating to issues of employee relations and human resources. 562 U.S. at 581.

effect to its plain meaning). Thus, "[e]xceptions to clearly-delineated statutes will be implied only where essential to prevent 'absurd results' or consequences obviously at variance with the policy of the enactment as a whole." *United States v. Rutherford*, 442 U.S. 544, 552 (1979). As this Court has stated repeatedly, "courts must presume that a legislature says in a statute what it means and means in a statute what it says." *Connecticut Nat'l Bank v. Germain,* 503 U.S. at 253-54.

In *Sedima, S.P.R.L. v. Imrex Co.,* this Court rejected the notion that Congress could have had "no inkling" of the implications of the private civil remedy provided in the RICO statute:

> Congress' "inklings" are best determined by the statutory language that it chooses, and the language it chose here extends far beyond the limits drawn by the Court of Appeals. Nor does the "clanging silence" of the legislative history [citation omitted] justify those limits. For one thing, § 1964(c) did not pass through Congress unnoticed. See Part II, *supra.* In addition, congressional silence, no matter how "clanging," cannot override the words of the statute.

473 U.S. at 495 n.13. Thus, the Second Circuit's confidence that Congress would not have expanded American judicial assistance to international arbitral panels created exclusively by private parties "without at least a mention of this legislative intention" (*Bear Stearns,* 165 F.3d at 190) was misplaced, as was the Seventh Circuit's reliance on that court's reasoning. Congressional silence cannot

override the plain meaning of the words used in a statute. In this case, the plain meaning of the word "tribunal" includes private, commercial arbitral tribunals.

Furthermore, broad general language in a statute is not necessarily ambiguous when a congressional objective requires broad terms. *Diamond v. Chakrabarty,* 447 U.S. 303, 315 (1980). *See also Haroco, Inc. v. American Nat'l Bank & Trust Co. of Chicago,* 747 F.2d 384, 398 (7th Cir. 1984), *aff'd per curiam,* 473 U.S. 606 (1985) (The fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity; it "demonstrates breadth."). This Court has stated there is no "such thing as a 'canon of donut holes,' in which Congress's failure to speak directly to a specific case that falls within a more general statutory rule creates a tacit exception. Instead, when Congress chooses not to include any exceptions to a broad rule, courts apply the broad rule." *Bostock v. Clayton County, Georgia,* __ U.S. __, 140 S. Ct. 1731, 1747 (2020).

This Court has cautioned that those of its members "who sometimes consult legislative history will never allow it to be used to 'muddy' the meaning of 'clear statutory language.' " *Food Mktg. Inst.,* 139 S. Ct. at 2364. *See also Milner,* 562 U.S. at 574 ("Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it."). Congress used the phrase "foreign or international tribunal" in Section 1782 without qualifiers and thus chose not to carve out any exception to the broad rule embodied in that statute. Accordingly, it is respectfully submitted that the judgment of the Seventh Circuit imposing a limitation on Section 1782 that finds no support in the text of the statute should be reversed.

CONCLUSION

On the basis of the foregoing, Petitioner Servotronics, Inc. respectfully requests that the Court reverse the judgment of the Seventh Circuit and direct the district court to reinstate (1) its November 19, 2018 Minute Order granting Servotronics' *ex parte* application and (2) the subpoena issued on November 20, 2018 (JA 8a).

Respectfully submitted,

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