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 RESPONDENT THE BOEING COMPANY

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QUESTION PRESENTED

Whether 28 U.S.C. § 1782(a), which permits district courts to order discovery "for use in a proceeding in a foreign or international tribunal," authorizes discovery for use in a private, contract-based arbitration.

RULE 29.6 STATEMENT

The corporate disclosure statement included in the brief in opposition remains accurate.

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BRIEF FOR RESPONDENT THE BOEING COMPANY

Respondent The Boeing Company respectfully submits that the case should be dismissed as moot, or in the alternative the judgment of the court of appeals should be affirmed.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–16a and J.A. 78a–93a) is reported at 975 F.3d 689. The opinion of the district court (Pet. App. 17a–25a and J.A. 69a–77a) is not reported but is available at 2019 WL 9698535.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 2020. The petition for a writ of certiorari was filed on December 7, 2020 and granted on March 22, 2021. Petitioner Servotronics, Inc. invoked this Court's jurisdiction under 28 U.S.C. § 1254(1). *See* Pet. 1. As discussed below, however, this Court lacks jurisdiction because the case is now moot. *See infra* at 13–17.

STATUTORY PROVISION INVOLVED

28 U.S.C. § 1782(a) provides in relevant part:

> 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 . . . . 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. . . .

INTRODUCTION

Servotronics has attempted to invoke 28 U.S.C. § 1782(a) to conduct extensive third-party discovery in connection with its private, contract-based arbitration against Rolls-Royce in the United Kingdom.

Servotronics and Rolls-Royce contractually agreed that the arbitration would be governed by the rules of the Chartered Institute of Arbitrators ("CIArb"). Yet before the arbitral panel had been selected, much less convened or given the opportunity to rule on the scope of discovery, Servotronics filed an *ex parte* application for voluminous document discovery from Boeing in the Northern District of Illinois.

Section 1782(a) does not authorize such a request by participants in a private arbitration. Instead, it authorizes district courts to order discovery "for use in a proceeding in a foreign or international tribunal." The phrase "foreign or international tribunal" refers to a body that derives its authority from a governmental grant or an international agreement—that is, from the exercise of sovereign authority by one or more states. As the Seventh Circuit correctly recognized, "[p]rivate foreign arbitrations," whose adjudicatory authority stems from a contractual agreement between the parties, "are not included." J.A. 90a. In so holding, the Seventh Circuit joined the Second and Fifth Circuits, which had reached the same conclusion more than two decades earlier. *See Nat'l Broad. Co.* v. *Bear Stearns & Co.*, 165 F.3d 184 (2d Cir. 1999); *Republic of Kazakhstan* v. *Biedermann Int'l*, 168 F.3d 880 (5th Cir. 1999).

An arbitration panel was convened, and the arbitration between Servotronics and Rolls Royce proceeded. Servotronics sought to delay the issuance of an award to give the Section 1782 discovery proceedings in the United States time to resolve. But the arbitrators denied that request, so an award is forthcoming. Given that Servotronics likely would be unable to use any documents it did obtain in the arbitration, the Court should dismiss this case as moot.

In the alternative, the Court should affirm the ruling below. The ordinary meaning of "foreign or international tribunal" in 1964—the year Congress incorporated that phrase into Section 1782(a)—extended solely to entities created through the exercise of sovereign power, tribunals with which the United States had significant experience at the time. The phrase did not include private, contract-based arbitrations—which live and die by the consent of the parties rather than by the will of sovereign states, and which were relatively rare in the early 1960s (particularly in the United States). The phrase's ordinary meaning is confirmed by all other relevant indicia of statutory interpretation, including statutory context and history, legislative history, and the imperative of avoiding a conflict with the Federal Arbitration Act, 9 U.S.C. § 1 *et seq*. Servotronics's arguments to the contrary are not persuasive and should be rejected.

STATEMENT

1. This case stems from a fire that occurred during ground testing of an aircraft engine in January 2016. J.A. 79a–80a. Rolls-Royce manufactured the engine, which was installed on a Boeing aircraft. *Id.* at 79a. Boeing sought compensation for the resulting damage from Rolls-Royce, which settled the claim with participation from its insurers. *Id.* at 80a.

Servotronics had supplied an engine component to Rolls-Royce. J.A. 80a. As Servotronics acknowledged below, "due to a manufacturing error [in the component], an unwanted wafer of metal dislodged in the [component]." *Id.* at 21a. That defect caused the tail pipe fire in the engine. *Ibid.*

Rolls-Royce sought reimbursement from Servotronics for the amounts it had paid to Boeing; Servotronics refused to pay. J.A. 80a. The contract between Servotronics and Rolls-Royce stated that, if they could not resolve a dispute by negotiation or mediation, "[t]he dispute shall be referred to and finally resolved by arbitration" in the United Kingdom "under the rules of the Chartered Institute of Arbitrators." *Id.* at 20a, 80a. Rolls-Royce accordingly initiated arbitration. *Id.* at 80a.

2. On October 26, 2018, before the arbitral panel had been appointed, Servotronics filed an *ex parte* application in the Northern District of Illinois, seeking permission to serve broad document discovery on Boeing under Section 1782. J.A. 24a, 80a. Servotronics's proposed discovery requests sought 22 different categories of documents that ranged from the purchase agreement and delivery documents to "[a]ll documents and communications between Boeing" and a third-party airline customer relating to the fire, the investigation, and any monetary payments between Boeing and the airline. *Id.* at 40a–43a. The document requests were in substance identical to those that Servotronics later made in the arbitration. *See* Rolls-Royce Rule 28(j) Ltr. 1, *Servotronics, Inc.* v. *Boeing Co.*, No. 19-1847 (7th Cir. May 8, 2020) ("Rule 28(j) Ltr.").

That same day, Servotronics also applied *ex parte* for three deposition subpoenas—directed to current

and former Boeing employees—in the District of South Carolina. J.A. 71a.

Servotronics did not serve the Section 1782 applications on Boeing or Rolls-Royce. The Northern District of Illinois initially granted the Illinois application without comment in a November 19, 2018 minute order. J.A. 69a. Rolls-Royce intervened and moved to quash the subpoena; Boeing separately intervened and submitted a response supporting Rolls-Royce's motion to quash. *Ibid.*

On April 22, 2019, the Illinois district court determined that "the London Arbitration for which Servotronics seeks discovery is a private arbitral proceeding that does not qualify as a 'foreign or international tribunal' under the statute." J.A. 74a. Accordingly, the district court "grant[ed] the motion [to quash], vacate[d] [its] previous order, and quash[ed] Servotronics's subpoena on Boeing." *Id.* at 70a. Servotronics appealed to the Seventh Circuit.

The district court in South Carolina separately denied Servotronics's application to serve deposition subpoenas on current and former Boeing employees, concluding—like the district court in Illinois—that Section 1782(a) "does not apply to private international arbitrations." *In re Servotronics, Inc.*, No. 2:18-mc-00364-DCN, 2018 WL 5810109, at *2 (D.S.C. Nov. 6, 2018), *rev'd and remanded sub nom. Servotronics, Inc.* v. *Boeing Co.*, 954 F.3d 209 (4th Cir. 2020). Servotronics appealed that decision to the Fourth Circuit.

3. The Fourth Circuit issued its opinion on March 30, 2020, reversing the South Carolina district court and concluding that "the UK arbitral panel charged with resolving the dispute between Servotronics and Rolls-Royce" is a "foreign or international tribunal" under Section 1782(a). *Servotronics, Inc.* v. *Boeing*

Co., 954 F.3d 209, 214 (4th Cir. 2020). The Fourth Circuit did not hold that all private foreign arbitrations are necessarily "foreign or international tribunal[s]," but rather that arbitration in the United Kingdom is "a product of 'government-conferred authority'" given "governmental regulation and oversight" of the arbitration process. *Ibid.*

The Seventh Circuit, by contrast, affirmed the Illinois district court's order quashing the subpoena on September 22, 2020. Relying on dictionary definitions, as well as statutory context and history, the Seventh Circuit concluded that "a 'foreign or international tribunal' within the meaning of [Section] 1782(a) is a state-sponsored, public, or quasi-governmental tribunal." J.A. at 92a. The court also noted that this interpretation of the statute avoided a "serious conflict" with the Federal Arbitration Act ("FAA"), which strictly limits the scope of third-party discovery, and was consistent with the legislative history and this Court's decision in *Intel Corp.* v. *Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004). J.A. 90a–93a.

Based on this interpretation, the Seventh Circuit held that Servotronics could not use Section 1782 to obtain discovery for use in the arbitration because such a private, contract-based arbitration is not a "state-sponsored, public, or quasi-governmental" entity. J.A. 92a. And, the court explained, the Fourth Circuit was "mistaken" in its analysis because "[t]he source of a private arbitral panel's adjudicative authority is found in the parties' contract, not a governmental grant of power." J.A. 85a n.2.

4. Separately, the arbitral panel was constituted, and Servotronics sought discovery under the CIArb's rules. Servotronics sought a number of documents encompassed by its Section 1782 subpoena from Rolls-

Royce, which exercised its contractual right to obtain documents from Boeing "that are reasonably necessary" for "an indemnity or subrogation claim." Rule 28(j) Letter Ex. A, at 2–3. The panel acknowledged its authority to order Rolls-Royce to demand that Boeing produce relevant documents, and Servotronics has obtained through this contractual mechanism all documents that the arbitral panel determined were necessary "for the fair resolution of this arbitration." *Id.* at 4. The remaining categories of documents—those still at issue in this case—are those that the arbitral panel concluded were "excessively broad," "insufficiently focused," "not necessary for the fair disposal of the arbitration," or "not directed to relevant documents." *Id.* at 3–6.

The merits hearing in the arbitration took place from May 10 to May 21, 2021. The parties filed post-hearing briefs on June 4, 2021. Servotronics separately asked to delay the award until December 31, 2021 so that it could submit evidence from the U.S. proceedings, and the panel denied the request. Nothing suggests that the panel would admit or consider any discovery Servotronics might obtain through Section 1782.

SUMMARY OF ARGUMENT

I. The Court should dismiss the case as moot.

A. Servotronics would no longer appear to have a legally cognizable interest in the outcome of this case. Section 1782 only permits discovery when the documents will be available "*for use* in a proceeding." 28 U.S.C. § 1782(a) (emphasis added). The arbitration hearing in Servotronics's dispute with Rolls-Royce ended on May 21, 2021, and the parties submitted post-hearing briefs shortly thereafter. The panel is expected to issue its award in the next several months

and, even if the award were delayed, there is no indication that the panel would consider new evidence at this late stage in the proceedings. Even if Servotronics were successful in this appeal, any documents produced likely could not be "use[d]" in the arbitration.

B. While Servotronics did not address mootness in its opening brief, it may argue on reply that its claims are "capable of repetition, yet evading review." But there is no "reasonable expectation" that Servotronics, a New York–based company, will again seek to use Section 1782 to obtain third-party discovery for use in an arbitration involving Boeing or Rolls-Royce, as would be required for this narrow exception to apply.

Moreover, a Section 1782 application seeking discovery for use in a private, contract-based arbitration can be fully litigated in a different case that does not present similar mootness concerns. Foreign or international arbitrations, particularly complex commercial disputes, routinely last long enough to permit the final resolution of a Section 1782 request. Here, Servotronics made its original discovery request in October 2018, more than two-and-a-half years before the arbitration hearing, which should be ample time for full appellate review in the typical case. Servotronics also had the option of seeking expedited proceedings at multiple stages of this case, yet never once attempted to do so.

II. Text, context, purpose, and history all demonstrate that Section 1782(a) does not permit discovery for use in a private, contract-based arbitration.

A. The phrase "foreign or international tribunal" in Section 1782(a) excludes private, contract-based arbitrations. In 1964, when Section 1782(a) was amended to include that phrase, it most naturally meant an entity exercising authority conferred by a

government or a group of sovereign states. It did not include private, contract-based arbitrations, which derive their authority from the consent of private parties. The ordinary meaning of "foreign or international tribunal" is confirmed by the etymology and contemporaneous dictionary definitions of "tribunal," as well as international practice and context in the early 1960s.

B. Statutory context and history confirm the ordinary meaning of the phrase "foreign or international tribunal." Other uses of that phrase in the 1964 amendment, and other portions of Section 1782(a) itself, make clear that it refers exclusively to bodies authorized by a single government or by an international agreement—that is, state-sponsored institutions. The statutory history also shows that Congress amended Section 1782(a) to improve judicial assistance and cooperation with foreign *countries*, not with private parties or *ad hoc* arbitral panels created by private parties, which cannot offer reciprocity to U.S. courts. And the meaning of "foreign or international tribunal" is further informed by the two predecessor statutes that Section 1782 replaced, both of which addressed only state-sponsored bodies.

C. Legislative history provides further support. The Senate and House reports show that the phrase "foreign or international tribunal" refers exclusively to a governmental or state-sponsored body. Congress substituted the word "tribunal" for "court" so that the statute would apply to "administrative and quasi-judicial proceedings" abroad. By contrast, nothing in the legislative history suggests that Congress intended to extend Section 1782(a) to private, contract-based arbitrations.

D. A contrary interpretation of "foreign or international tribunal" would create a serious conflict with the FAA. Construing Section 1782(a) to permit discovery for use in private, contract-based arbitrations would allow private parties to obtain much broader discovery under that regime than under the FAA, and it would displace the FAA in those "foreign or international" arbitrations that are subject to both statutes.

E. The broad interpretation of Section 1782(a) advanced by Servotronics is unpersuasive and would result in significant and adverse consequences.

1. Servotronics relies heavily on dislocated and passing legal references to arbitration panels as "tribunals." But these are not relevant to whether, in 1964, the phrase "foreign or international tribunal" would have been understood to include private, contract-based arbitrations, let alone whether Congress intended to adopt that understanding when it revised Section 1782. Rather, the most persuasive indicia of statutory meaning dictate the conclusion that it did not.

2. Servotronics is incorrect that *Intel Corp.* v. *Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004)—or a footnote from a law review article that the Court cited in a parenthetical—resolves the issue presented here. *Intel* involved a state-sponsored arm of the European Communities, not a private, contract-based arbitral panel; the Court thus did not address whether a private, contract-based arbitration falls within the scope of Section 1782(a). The law review footnote Servotronics claims as dispositive says only that "[t]he term 'tribunal' . . . includes investigating magistrates, administrative and arbitral tribunals, and quasi-judicial agencies, as well as conventional civil, commercial, criminal, and administrative courts." *Id.* at 258. This

says nothing about whether the "arbitral tribunals" addressed in the footnote include those empowered by private contract. And the fact that all other entities included in the list are state-sponsored strongly suggests that the referenced "arbitral tribunals" are as well.

3. The adverse consequences of Servotronics's interpretation of Section 1782(a) would be significant. Private, contract-based arbitrations are now a common part of the landscape of international commerce. Commercial parties regularly incorporate arbitration clauses into their transnational contracts, and numerous associations—of widely varying sophistication and reputation—administer commercial arbitrations worldwide. Many parties choose to enter into arbitration clauses precisely because the arbitration process is more efficient and streamlined than litigation. But of course, litigants will seek any potential advantage they might obtain—including the use of Section 1782—once embroiled in a dispute. The adoption of Servotronics's interpretation of Section 1782(a) would thus force district courts to adjudicate discovery disputes flowing from numerous private, contract-based international arbitrations, simply because one party finds it advantageous to target a third party found in the United States. That "Americanization" of international arbitration is not welcomed by other sovereign states, introduces a structural unfairness to the arbitration process, and is not remotely an objective that Congress would have sought—or could have contemplated—in 1964.

ARGUMENT

The arbitration hearing for which Servotronics requested discovery has concluded, and the arbitration panel has refused to delay its issuance of an award to

await the results of these Section 1782 proceedings. Section 1782 only permits discovery when the documents will be available "*for use* in a proceeding," 28 U.S.C. § 1782 (emphasis added), and no such use will be possible here. Accordingly, the Court should dismiss this case as moot.

Alternatively, the Court should affirm the judgment below. The ordinary meaning of "foreign or international tribunal" in 1964—the year Congress incorporated that phrase into Section 1782(a)—extended solely to entities exercising sovereign authority. The phrase did not cover contract-based arbitrations between private parties.

I. THIS COURT LACKS JURISDICTION BECAUSE THE CASE IS MOOT.

This case is almost certainly moot because it appears that Servotronics no longer has a legally cognizable interest in the outcome of this appeal.

A. THERE IS NO LONGER A "CASE" OR "CONTROVERSY."

Under Article III of the Constitution, the "judicial Power" extends only to "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. "A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—'when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" *Already, LLC* v. *Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy* v. *Hunt*, 455 U.S. 478, 481 (1982) (per curiam)).

Mootness can arise at any stage of the litigation, including on appeal. *City News & Novelty, Inc.* v. *City of Waukesha*, 531 U.S. 278, 282 (2001). This case has become moot because Servotronics no longer has a legally cognizable interest in the documents requested

through Section 1782(a)—and therefore in the case itself.

The arbitration hearing ended on May 21, 2021, and the parties filed post-hearing briefs on June 4, 2021. Separately, the panel denied Servotronics's request to delay the award until December 31, 2021, and it is expected to issue an award within the next several months. A decision by the arbitral panel would plainly moot this case because the documents sought by Servotronics could not even conceivably be "use[d]" (28 U.S.C. § 1782(a)) in the then-concluded arbitration.

Even at present, moreover, the case is still almost certainly moot. The arbitral hearing and post-hearing briefing are over. The panel has already denied Servotronics's request to delay the hearing so that it could submit evidence from the U.S. proceedings. Nothing suggests that the panel would change course and consider any discovery Servotronics eventually obtained using Section 1782. Any "victory" by Servotronics in these proceedings would be hollow, because Servotronics would obtain documents that it likely could not use in the arbitration and that would not affect its "particular legal rights." *Already, LLC*, 568 U.S. at 91 (quoting *Alvarez* v. *Smith*, 558 U.S. 87, 93 (2009)); *see also Weinstein* v. *Bradford*, 423 U.S. 147, 148 (1975) (per curiam) (respondent released from supervision had no interest in petitioner's procedures for granting parole). Under these circumstances, the courts of appeals have repeatedly recognized that a request for discovery under Section 1782(a) is moot. *See In re Ishihara Chem. Co.*, 251 F.3d 120, 125–26 (2d Cir. 2001) (request for Section 1782 discovery moot because evidentiary hearing had already occurred); *Comision Ejecutiva Hidroelectrica del Rio Lempa* v.

Nejapa Power Co., 341 F. App'x 821, 827 (3d Cir. 2009) (request for Section 1782(a) discovery moot following conclusion of arbitration hearing).

B. THE NARROW EXCEPTION FOR CLAIMS THAT ARE "CAPABLE OF REPETITION YET EVADING REVIEW" IS INAPPLICABLE HERE.

Servotronics ignores mootness in its opening brief, but might invoke the exception to the mootness doctrine for claims that are "capable of repetition, yet evading review" on reply. *United States* v. *Sanchez-Gomez*, 138 S. Ct. 1532, 1540 (2018) (quoting *Kingdomware Techs., Inc.* v. *United States*, 136 S. Ct. 1969, 1976 (2016)). This exception applies "only in exceptional situations," *Kingdomware*, 136 S. Ct. at 1976 (quoting *Spencer* v. *Kemna*, 523 U.S. 1, 17 (1998)), where (1) "there is a reasonable expectation that the same complaining party will be subjected to the same action again," and (2) "the challenged action is in its duration too short to be fully litigated prior to cessation or expiration." *Sanchez-Gomez*, 138 S. Ct. at 1540 (quoting *Turner* v. *Rogers*, 564 U.S. 431, 439–40 (2011)). Neither of these preconditions is satisfied here.

First, Servotronics cannot demonstrate that "the same legal issue in this case is likely to recur in future controversies between the same parties." *Kingdomware*, 136 S. Ct. at 1976; *see Murphy* v. *Hunt*, 455 U.S. 478, 482–83 (1982). Servotronics—a New York–based company—cannot plausibly assert it is likely to be involved in another Section 1782 dispute involving private arbitration overseas, let alone with either Boeing or Rolls-Royce.

Second, a Section 1782 application could be fully litigated—including before this Court—before a private, contract-based international arbitration is resolved.

This Court issued its decision in *Intel Corp.* v. *Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004), roughly two-and-a-half years after the Section 1782 application there was filed. Moreover, the pace of federal litigation on this topic will likely increase now that multiple circuits have resolved the threshold issue of whether Section 1782(a) applies to private arbitrations. And an applicant concerned about potential mootness could seek expedited consideration at multiple stages of the case.[1]

Arbitrations before the International Chamber of Commerce now last an average of 26 to 28 months. *See* International Chamber of Commerce ("ICC"), *ICC Dispute Resolution 2019 Statistics* at 17, https://iccwbo.org/publication/icc-dispute-resolution-statistics (as visited June 16, 2021). And those numbers are *averages*; many arbitrations—including complex commercial arbitrations in which third-party evidence might be most relevant—often take much longer. *See, e.g.*, Petition for Recognition and Enforcement of Foreign Arbitration Award, *Vale S.A.* v. *BSG Res. Ltd.*, No. 1:19-cv-03619-VSB (S.D.N.Y. Apr. 23, 2019), Dkt. 1 (award issued nearly five years after request for arbitration filed with the London Court of International Arbitration). Moreover, an arbitration panel that

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[1] Here, Servotronics made its original discovery request in October 2018, more than two-and-a-half years before the arbitration hearing. That is ample time for full appellate review in a typical case. Servotronics could have requested expedited consideration at any stage of the proceedings, but it never did so.

wanted to consider evidence sought pursuant to Section 1782 could always delay the arbitration hearing until the U.S. proceedings had concluded, thus removing any mootness concerns.

An application seeking Section 1782 discovery for use in a private arbitration therefore could well be fully litigated before the underlying arbitration has concluded, thus rendering that prerequisite for the exception inapplicable also.

II. SECTION 1782(A) CANNOT BE USED TO OBTAIN EVIDENCE FOR USE IN PRIVATE, CONTRACT-BASED ARBITRATIONS.

Section 1782(a) provides that "[t]he 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." 28 U.S.C. § 1782(a). The text, context, purpose, and legislative history of Section 1782(a) make clear that a private, contract-based arbitration is not a statutory "foreign or international tribunal."

A. THE STATUTORY PHRASE "FOREIGN OR INTERNATIONAL TRIBUNAL" DOES NOT INCLUDE PRIVATE, CONTRACT-BASED ARBITRATIONS.

"As in all statutory construction cases," this Court "begin[s] [its] examination of § 1782 with the language of the statute." *Intel Corp.* v. *Advanced Micro Devices, Inc.*, 542 U.S. 241, 255 (2004) (citation and alteration omitted). The key statutory language at issue here is "foreign or international tribunal." 28 U.S.C. § 1782(a). In 1964 (and today), that phrase would have been understood as referring to a body that de-

rives its authority from a single government or international agreement, and not to a private arbitration panel.

1. That is clear from the ordinary meaning of the phrase "foreign or international tribunal." A "foreign . . . tribunal" has long been understood as an adjudicative body that derives its authority from a single foreign government. *See Underhill* v. *Hernandez*, 168 U.S. 250, 252 (1897) (treating term "foreign tribunals" as synonymous with "the courts of one [foreign] country"); *see also* 3 Emmerich de Vattel, *The Law of Nations or the Principles of Natural Law* § 350 (Charles G. Fenwick trans., Carnegie Inst. 1916) (1758) ("a sovereign" ordinarily "should not entertain the complaints of his subjects against a foreign tribunal" under the "Law of Nations," which "prescribes that States shall mutually respect in this manner the jurisdiction of one another's courts"). Likewise, "an international tribunal owes both its existence and its powers to an international agreement." Hans Smit, *Assistance Rendered by the United States in Proceedings Before International Tribunals*, 62 Colum. L. Rev. 1264, 1267 (1962), *quoted with approval in Nat'l Broad. Co.* v. *Bear Stearns & Co.*, 165 F.3d 184, 189–90 (2d Cir. 1999). Together, these two categories—"foreign . . . tribunal[s]" and "international tribunal[s]"—cover the spectrum of state-sponsored adjudicatory entities.

Private arbitration panels, by contrast, derive their authority from private contractual agreement, not an international agreement or sovereign grant of power. As such, they serve as an *alternative* to sovereign legal systems, for parties that agree "to forgo the legal process and submit their disputes to private dispute resolution." *Stolt-Nielsen S.A.* v. *AnimalFeeds*

Int'l Corp., 559 U.S. 662, 682 (2010); *see also Lamps Plus, Inc.* v. *Varela*, 139 S. Ct. 1407, 1415–16 (2019) ("'[T]he first principle that underscores all of our arbitration decisions' is that '[a]rbitration is strictly a matter of consent'" because "arbitrators wield only the authority they are given" by the parties. (citation omitted)). Servotronics identifies no support for the proposition that the term "foreign or international tribunal" was commonly used in 1964 to refer to such private arbitrations.

2. This construction draws further support from the origins and ordinary meaning of the term "tribunal," and its usage in legislation and international arbitration agreements.

"Tribunal" is derived from the Latin, where it meant "[a] dais or platform . . . from which [the magistrate] pronounced official judgments" and a "court of law; a judgement." *Oxford Latin Dictionary* 1971 (1982). The word then migrated from Latin to the Romance languages, and from there to English—in each case maintaining a clear definitional link to governmental authority. *See, e.g.*, Thomas Dyche & William Pardon, *A New General English Dictionary* (1760) ("a court of justice, where offenders are tried, and sentenced to be punished according to their crimes"); 1 William Cobbett, *A New French and English Dictionary* 396 (1833) (defining the French word "*tribunal*" in English as a "court of justice"); 1 M. Seoane, *Neuman and Baretti's Dictionary of the Spanish and English Languages* 824 (5th ed. 1831) (defining the Spanish word "tribunal" in English as a "court of justice; judicature"); 1 Joseph Baretti, *Dictionary of the English and Italian Languages* (1760) (defining the Italian word "tribunale" in English as "a tribunal, a judgment-seat, a court of justice").

This historical definition of "tribunal" has continued to inform the word's ordinary meaning in English into modern times—including, significantly, into the 1950s and early 1960s. In 1964, when Section 1782 was amended to include "foreign or international tribunals," "tribunal" was principally defined as the seat of a judge or as an adjudicatory body acting with governmental authority. *See, e.g.*, *Webster's New International Dictionary of the English Language* 2707 (2d ed. 1955) (defining "tribunal" as "the seat of a judge" or "a court or forum of justice"); *Black's Law Dictionary* 1677 (4th ed. 1951) ("[t]he seat of a judge" or "[t]he whole body of judges who compose a jurisdiction; a judicial court"). Consistent with the linguistic origins of "tribunal," those definitions exclude private, contract-based arbitrations from Section 1782's scope because a private arbitrator exercises contractually based authority, rather than a grant of authority from the sovereign or sovereigns. *See, e.g.*, *Stolt-Nielsen S.A.*, 559 U.S. at 682 (noting that arbitrator's power derives from the parties' agreement to arbitrate).[2]

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[2] The use of "tribunal" in contemporaneous statutes further illustrates that Congress ordinarily used the word to refer to a body empowered by sovereign authority. *See, e.g.*, Act of July 7, 1955, Pub. L. 84-133, ch. 279, 69 Stat. 264, 267 (making annual appropriation to complete work required by "the award of the Alaskan Boundary Tribunal," which had been created pursuant to a treaty); Act of Dec. 30, 1963, Pub. L. 88-245, 77 Stat. 776, 779 (same); District of Columbia Legal Aid Act, Pub. L. 86-531, §§ 2, 3, 74 Stat. 229 (1960) (establishing "legal representation of indigents" before certain "courts and tribunals" in the District of Columbia, all of which were governmental bodies); Indian Civil Rights Act, Pub. L. 90-284, tit. II, § 201(2), 82 Stat. 73, 77 (1968) (defining tribal powers of self-government to "includ[e] all governmental powers possessed by an Indian tribe . . . and all offices, bodies, and tribunals by and through which they are executed").

This distinction is reflected in the wording of other legislation. For example, the Government in the Sunshine Act specifically distinguishes between "an action in a foreign court or international tribunal" and "an arbitration." Pub. L. 94-409, § 3(a), 90 Stat. 1241, 1242 (1976), *codified at* 5 U.S.C. § 552b(c)(10); *see also* Deep Seabed Hard Mineral Resources Act, Pub. L. 96-283, § 102(b)(4), 94 Stat. 553, 559 (1980) (directing the Secretary of State to pursue peaceful resolution of controversies over seabed use through "negotiation, conciliation, arbitration, or resort to agreed tribunals"), *codified at* 30 U.S.C. § 1412(b)(4). And "[r]eferences in the United States Code to 'arbitral tribunals' almost uniformly concern an adjunct of a foreign government or international agency," *Republic of Kazakhstan* v. *Biedermann Int'l*, 168 F.3d 880, 882 & n.6 (5th Cir. 1999) (citing 16 U.S.C. § 973n, 22 U.S.C. § 290k-11(a), and 22 U.S.C. § 1650(a)), rather than privately authorized arbitral panels. [3] Conversely, when the

[3] For example, Congress used the phrase "arbitral tribunal" when it implemented the Convention on the Settlement of Investment Disputes between States and Nationals of Other States in 1966. *See* Convention on the Settlement of Investment Disputes Act of 1966, Pub. L. 89-532, 80 Stat. 344. That choice is unsurprising. The Convention applies exclusively to investment treaty disputes "and disputes wholly between private parties are . . . excluded." G.R. Delaume, *Convention on the Settlement of Investment Disputes Between States and Nationals of Other States*, 1 Int'l Law. 64, 68 (1966). Thus, the Convention itself is the product of sovereign consent, and tribunals of the International Centre for Settlement of Investment Disputes are constituted pursuant to sovereign power expressed both in the Convention and in the relevant investment treaty. This appeal does not present the question of whether investment treaty arbitrations fall within the scope of Section 1782—the arbitration at issue here is unquestionably a private, contract-based arbitration that

United States Code does reference private arbitration—for example, in the Federal Arbitration Act—it does not use the term "tribunal." *See, e.g.*, 9 U.S.C. § 7 (referring to the "arbitrator or arbitrators"); *see also* 9 U.S.C. § 7 (1964) (same). Neither Servotronics nor any of its *amici* has identified a single example of a U.S. statute that uses the term "tribunal" to refer to private arbitration.

Moreover, two key contemporary agreements on international arbitration—the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") and the 1961 European Convention on International Commercial Arbitration—did not refer to arbitral panels as "tribunals." *See* United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, T.I.A.S. No. 6997 (implemented at 9 U.S.C. §§ 201–208); European Convention on International Commercial Arbitration of 1961 Done at Geneva, April 21, 1961, No. 7041, 484 U.N.T.S. 364 (1963–1964). Instead, both conventions used other terms like "arbitrators," "arbitration proceedings," and "arbitral authority."

3. Congress's understanding of the term "foreign or international tribunal" would also have been influenced by the plethora of interstate tribunals and claims commissions established pursuant to bilateral and multilateral treaties prior to 1964. Between 1914 and 1939, hundreds of bilateral treaties were concluded providing for compulsory interstate arbitration. Gary Born, International Commercial Arbitra-

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derives from an underlying agreement between two private commercial parties.

tion 18 & n.103 (3rd ed. 2021) (citing Hans von Mangoldt*, Arbitration and Conciliation Treaties*, *in* 1 Encyclopedia of Public International Law 28, 30 (1981)). The United States in particular was an avid proponent and user of such treaty-based arbitrations, starting with the 1794 Jay Treaty arbitrations with Great Britain and including the Mixed Claims Commissions of the 1920s and 1930s. The United States–German Mixed Claims Commission, for example, was created in 1922 to determine Germany's post-war financial obligations to the United States and was specifically mentioned in the legislative history of the 1964 amendment to Section 1782. *See* H.R. Rep. No. 88-1052, at 5 (1963) (noting that the predecessor provisions to Section 1782 proved "inadequate in providing meaningful assistance to international tribunals" like the United States–German Mixed Claims Commission); Act of Sept. 22, 1922, Pub. L. 67-364, ch. 429, 42 Stat. 1048, 1051; *see also, e.g.*, *Shapleigh* v. *Mier*, 299 U.S. 468, 471 (1937).

Thus, when Section 1782 was amended, "foreign or international tribunal" would have been commonly understood as including these types of state-sponsored adjudicative bodies—but not private arbitration.

B. Statutory Context Confirms That A Private, Contract-Based Arbitration Is Not A "Tribunal."

Statutory text "cannot be construed in a vacuum." *Home Depot U.S.A., Inc.* v. *Jackson*, 139 S. Ct. 1743, 1748 (2019) (citation omitted). Rather, "[i]t is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in overall statutory scheme." *Ibid.* (citation omitted); *see also, e.g.*, *Territory of Guam* v.

United States, 141 S. Ct. 1608, 1613 (2021) (emphasizing "[t]he interlocking language and structure of the relevant text"). And related enactments, including predecessor statutes, can shed light on textual meaning. *See, e.g.*, *Kawasaki Kisen Kaisha Ltd.* v. *Regal-Beloit Corp.*, 561 U.S. 89, 106–07 (2010) (analyzing the "current version of the Carmack Amendment," 49 U.S.C. § 11706(a), in light of its "historical coverage" in previous "legislative versions"). Each of these additional sources confirms that the phrase "foreign or international tribunal" does not include private, contract-based arbitral panels.

1. That is clear in the first instance from other text in Section 1782(a), the fourth sentence of which provides that district courts can "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." 28 U.S.C. § 1782(a) (emphasis added). This language presumes that a "foreign country" will prescribe the "practice and procedure" for any "foreign . . . tribunal." That is true for entities exercising their investigative or adjudicatory authority by virtue of a sovereign state's grant of power. But it is not true for contract-based private arbitration, the rules of which are agreed to by private parties in their contract or by separate agreement, and are endorsed by the arbitral panel itself, which is a private entity.

Moreover, "it is a normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning." *Pereira* v. *Sessions*, 138 S. Ct. 2105, 2115 (2018) (citation omitted). The 1964 amendment to Section

1782 was part of a broader set of statutory amendments that incorporated the phrase "foreign or international tribunal" in several other provisions of Title 28. Those other usages are best understood as referring exclusively to governmental or state-sponsored bodies.

For example, 28 U.S.C. § 1781, which addresses the transmittal of "letter[s] rogatory" between a "foreign or international tribunal" and the U.S. Department of State, specifically grants the State Department authority "to receive a letter rogatory issued, or request made, by a foreign or international tribunal." *Id.* § 1781(a)(1). Because a letter rogatory is a "matte[r] of comity between governments," J.A. 89a–90a; *see also, e.g.*, Letters Rogatory, *Black's Law Dictionary* 1050 (4th ed. 1957), this usage "suggests that the phrase 'foreign or international tribunal' as used in this statutory scheme means state-sponsored tribunals and does not include private arbitration panels." J.A. 90a.[4]

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[4] The Sixth Circuit believed that Section 1781's reference to a "request made," in addition to a "letter rogatory," prevents any conclusion that "the word 'tribunal' in the statute refers only to judicial or other public entities" because "[a] private arbitral panel can make a request for evidence." *Abdul Latif Jameel Transp. Co.* v. *FedEx Corp.* (*In re Application to Obtain Discovery for Use in Foreign Proceedings*), 939 F.3d 710, 723 (6th Cir. 2019). But the inclusion of "request made" was necessary because international tribunals, unlike sovereign states, do not have the inherent authority to submit discovery requests to the United States through letters rogatory. *See* 1 Shabtai Rosenne, *The Law and Practice of the International Court, 1920-2005*, at 1309 (4th ed. 2006) ("[T]he International Court has none of the powers of an internal court to obtain evidence through letters rogatory and the like[.]"). And it would be highly anomalous for Congress to

Similarly, 28 U.S.C. § 1696 addresses "service . . . of any document issued in connection with a proceeding in a foreign or international tribunal." Under that provision, a district court may order service "pursuant to a letter rogatory issued, or request made, by a foreign or international tribunal." *Ibid.* As with Section 1781, the direct statutory link between "letter[s] rogatory" and "foreign or international tribunal[s]" further confirms that the latter phrase refers to entities imbued with sovereign authority. *See* J.A. 89a–90a.

2. The history of Section 1782(a) further confirms that it applies exclusively to governmental or state-sponsored institutions.

In 1958, Congress created the Commission on International Rules of Judicial Procedure (the "Rules Commission")—which ultimately drafted the amendments to Section 1782(a)—and directed it to consider statutory revisions that could "improv[e]" avenues for U.S. courts to assist "foreign courts and quasi-judicial agencies." Act of Sept. 2, 1958, Pub. L. No. 85-906, § 2, 72 Stat. 1743. In so doing, Congress was focused on diplomacy and reciprocity, and specifically on improving "judicial assistance and cooperation between the United States and *foreign countries*." *Ibid.* (emphasis added); *see also Intel Corp.* v. *Advanced Micro Devices, Inc.*, 542 U.S. 241, 252 (2004) (statute "encourag[es] foreign countries by example to provide similar assistance to our courts").

"Noticeably absent from this statutory charge is any instruction to study and recommend improve-

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designate the State Department—which is responsible for carrying out U.S. foreign and diplomatic policy—to receive evidentiary requests from private arbitration panels.

ments in judicial assistance to private foreign arbitration." J.A. 89a. Nor would it have made sense for Congress to have included private, contract-based arbitrations within the Commission's statutory scope of work: Because private arbitral panels can exercise only the authority granted to them by private parties pursuant to contracts, they cannot offer general assistance or reciprocity to U.S. courts or quasi-judicial agencies.

3. The ordinary meaning of the statutory text is also confirmed by the origin of the term "international tribunal" in Section 1782(a). *See Lorillard Tobacco Co.* v. *Reilly*, 533 U.S. 525, 542 (2001) ("We are aided in our interpretation by considering the predecessor . . . provision and the circumstances in which the current language was adopted.").

Congress first enacted Section 1782 in 1948. Act of June 25, 1948, Pub. L. No. 80-773, ch. 646, § 1782, 62 Stat. 869, 949. For the next 16 years, the statute applied exclusively to proceedings in "court[s]" in "foreign countr[ies]." *Ibid.*; *see also Intel*, 542 U.S. at 248 (summarizing statutory history). During that time period, separate statutory provisions, contained in 22 U.S.C. §§ 270–270g, applied to evidence used in "international tribunal[s] . . . established pursuant to an agreement between the United States and any foreign government or governments." 22 U.S.C. § 270 (1958); *see also id.* §§ 270a–270c.

When Congress amended Section 1782 in 1964, it simultaneously repealed Sections 270 through 270g. *See* Act of Oct. 3, 1964, Pub. L. 88-619, § 3, 78 Stat. 995. The revised Section 1782 thus merged the two predecessor statutes by substituting "foreign or international tribunal" for "court in a foreign country." *See Republic of Kazakhstan* v. *Biedermann*, 168 F.3d 880,

882 (5th Cir. 1999) ("[T]he new version of § 1782 was drafted to meld its predecessor with other statutes which facilitated discovery for international government-sanctioned tribunals."); *see also Nat'l Broad. Co.* v. *Bear Stearns & Co.*, 165 F.3d 184, 189 (2d Cir. 1999).

Both predecessor statutes addressed only state-sponsored bodies, not private, contract-based arbitral panels. *See Nat'l Broad. Co.*, 165 F.3d at 189 ("There is no question that [§§ 270–270g] applied only to intergovernmental tribunals," and the predecessor version of Section 1782 applied to foreign "court[s]."). That meaning should inform the proper interpretation of Section 1782(a). *See Lorillard Tobacco Co.*, 533 U.S. at 542. Congress does not "hide elephants in mouseholes," and it does not use "vague terms or ancillary provisions" to "alter the fundamental details" of a statutory scheme. *Whitman* v. *Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001). If Congress had intended to expand Section 1782 to cover the field of private, contract-based arbitration, it would have said so.

C. Legislative History Confirms That "Foreign Or International Tribunal" Excludes Private, Contract-Based Arbitration.

The Senate and House reports accompanying the 1964 amendment to Section 1782 further demonstrate that Congress understood and intended "foreign or international tribunal" to refer exclusively to a state-sponsored body.

The reports indicate that Congress substituted the word "tribunal" for "court" in Section 1782(a) to address the "growth of administrative and quasi-judicial proceedings all over the world." S. Rep. No. 88-

1580, at 7–8 (1964); H.R. Rep. No. 88-1052, at 9 (1963). Both chambers explained that "the necessity for obtaining evidence in the United States may be as impelling in proceedings before a foreign administrative tribunal or quasi-judicial agency as in proceedings before a conventional foreign court. Subsection (a) therefore provides the possibility of U.S. judicial assistance in connection with all such proceedings." S. Rep. No. 88-1580, at 8; H.R. Rep. No. 88-1052, at 9. Congress thus selected the word "tribunal" to extend Section 1782(a) to administrative and quasi-judicial bodies and "to make it clear that assistance is not confined to proceedings before conventional courts." S. Rep. No. 88-1580, at 7; H.R. Rep. No. 88-1052, at 9; *accord Nat'l Broad. Co.* v. *Bear Stearns & Co.*, 165 F.3d 184, 189 (2d Cir. 1999).

The reports also offered a specific example of the type of tribunals that Congress had in mind, referring to proceedings "before investigating magistrates in foreign countries." S. Rep. No. 88-1580, at 7; H. Rep. No. 88-1052, at 9. By the 1960s, the "investigating magistrate" had been "the distinctive figure in the preliminary stages of European criminal proceedings" for nearly 500 years. Morris Ploscowe, *The Investigating Magistrate (Juge D'Instruction) In European Criminal Procedure*, 33 Mich. L. Rev. 1010, 1010 (1935), *cited in Rochin* v. *California*, 342 U.S. 165, 178 n.3 (1952) (Douglas, J., concurring). Congress's reference to investigating magistrates further highlights that Section 1782(a) applied to entities deriving their authority from the sovereign.

Notably, nothing in the legislative history suggests that Congress intended to extend—or even contemplated extending—Section 1782(a) to cover the

"then-novel arena" of foreign, contract-based arbitrations between private parties of different nationalities. *Republic of Kazakhstan* v. *Biedermann Int'l*, 168 F.3d 880, 882 (5th Cir. 1999); *accord Nat'l Broad. Co.*, 165 F.3d at 189. That silence is telling: In 1964, the United States had not yet ratified the New York Convention to make foreign awards enforceable here.[5] And prominent scholars of international arbitration considered U.S. ratification extremely unlikely given the prevailing wariness of U.S. government officials and the business community towards the field.[6] Congress would have had no reason to extend discovery to private, contract-based arbitrations when it had not yet agreed to enforce judgments arising from such arbitrations.

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[5] In fact, of the 168 state parties to the Convention today, only 26 had ratified it by October 3, 1964, the date Section 1782 was revised. Neither the United Kingdom nor Canada had done so. *See Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention")*, United Nations Commission on International Trade Law, https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2 (last visited June 18, 2021).

[6] As Martin Domke, Vice President of the American Arbitration Association, noted in 1959: "The United States does not adhere to any multilateral convention on the enforcement of foreign arbitral awards . . . [n]or is there any likelihood that the United States . . . will accede to, much less ratify, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards." Martin Domke, *The Settlement of Disputes in International Trade*, 1 U. Ill. L. Forum 402, 412 (1959).

D. An Expansive Interpretation Of Section 1782 Would Conflict With The Federal Arbitration Act.

As the Second, Fifth, and Seventh Circuits have recognized, construing "foreign or international tribunal" to exclude private, contract-based arbitrations is necessary to avoid a serious potential conflict with the FAA and the pro-arbitration policies it embodies. 9 U.S.C. § 1 *et seq.*; *see Nat'l Broad. Co.* v. *Bear Stearns & Co.*, 165 F.3d 184, 187, 190–91 (2d Cir. 1999); *Republic of Kazakhstan* v. *Biedermann Int'l*, 168 F.3d 880, 882–83 (5th Cir. 1999); J.A. 90a. Considering a similar conflict between the FAA and another federal statute in *Epic Systems Corp.* v. *Lewis*, this Court reiterated that federal courts have a "duty to interpret Congress's statutes as a harmonious whole rather than at war with one another." 138 S. Ct. 1612, 1618 (2018). Interpreting Section 1782(a) to authorize judicial assistance for private arbitration would generate just such disharmony by permitting judicially assisted discovery that is unavailable under the FAA.

FAA-authorized discovery is more limited than Section 1782(a) discovery in three ways. *First*, Section 7 of the FAA authorizes arbitrators—not litigants—to "summon" witnesses and to order those witnesses to produce "any book, record, document, or paper which may be deemed material as evidence in the case." 9 U.S.C. § 7. "[W]hile [an] arbitration panel may subpoena documents and witnesses, litigants have no comparable privilege" under the FAA. *St. Mary's Med. Ctr. of Evansville, Inc.* v. *Disco Aluminum Prods. Co.*, 969 F.2d 585, 591 (7th Cir. 1992) (summarizing *Burton* v. *Bush*, 614 F.2d 389, 390 (4th Cir. 1980), in parenthetical); *see also Nat'l Broad. Co.*, 165 F.3d at 187;

J.A. 91a. Section 1782(a), by contrast, allows "any interested person" to seek a district court order for testimony or documents.

Second, the FAA gives exclusive enforcement authority only to the "district court for the district in which such arbitrators, or a majority of them, are sitting." 9 U.S.C. § 7. But Section 1782(a) authorizes district courts to grant discovery assistance anywhere "a person resides or is found." Permitting that sweeping grant of authority to apply to a foreign private, contract-based arbitration would permit parties to launch discovery actions in multiple venues—as Servotronics did in Illinois and South Carolina—to forum shop for a favorable result.

Third, the FAA has not adopted the liberal pretrial discovery available to litigants under the Federal Rules of Civil Procedure. "Nowhere does the FAA grant an arbitrator the authority to order non-parties to appear at depositions, or the authority to demand that non-parties provide the litigating parties with documents during prehearing discovery." *COMSAT Corp.* v. *Nat'l Sci. Found.*, 190 F.3d 269, 275 (4th Cir. 1999); *see also St. Mary's Med. Ctr.*, 969 F.2d at 591 ("parties who agree to arbitrate relinquish the right to liberal pretrial discovery allowed by the federal rules" (summarizing *Burton*, 614 F.2d at 390, in parenthetical)). Section 1782(a), however, allows just such sweeping discovery, including from non-parties.

As the Seventh Circuit put it in the decision below, "[i]t's hard to conjure a rationale for giving parties to private foreign arbitrations such broad access to federal-court discovery assistance in the United States while precluding" that assistance in domestic arbitrations. J.A. 91a; *accord Nat'l Broad. Co.*, 165 F.3d at 191. At minimum, that "inconsistency . . .

would be devoid of principle," and "would create an entirely new category of disputes concerning the appointment of arbitrators and the characterization of arbitral panels as domestic, foreign, or international." *Nat'l Broad. Co.*, 165 F.3d at 191; *accord Biedermann*, 168 F.3d at 883.

The interpretation of Section 1782(a) advanced by Servotronics would also risk direct conflict with the FAA, since a considerable subset of "foreign or international" arbitrations are subject to the FAA. *See* J.A. 91a–92a. The FAA expressly provides that any arbitration involving "property located abroad," "envisag[ing] performance or enforcement abroad," or having "some other reasonable relation with one or more foreign states" is subject to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, without reference to where the arbitration is located. 9 U.S.C. § 202; *see also id.* § 302 (extending certain provisions in the FAA to arbitrations brought under the Inter-American Convention on International Commercial Arbitration); *see generally Nat'l Broad. Co.*, 165 F.3d at 187 (FAA "applies to private commercial arbitration conducted in this country" and "also to arbitrations in certain foreign countries by virtue of legislation implementing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Inter-American Convention on International Commercial Arbitration." (citations omitted)).

Thus, arbitrations meeting these criteria, even if convened in the United States, would likely qualify as

"foreign or international" arbitrations under Section 1782.[7]

If Servotronics's position is adopted, these arbitrations would be subject to incompatible discovery regimes under Section 1782(a) and the FAA. Federal statutes should not be read to create such a conflict with the FAA absent "a clearly expressed congressional intention that such a result should follow." *Epic Sys. Corp.*, 138 S. Ct. at 1624 (citation and internal quotation marks omitted). Section 1782(a), however, does not "even hint at a wish to displace the Arbitration Act—let alone accomplish that much clearly and manifestly." *Ibid.*

The potential conflict between Section 1782(a) and the FAA would significantly undermine the strong, statutorily embodied federal policy favoring arbitration. This Court has emphasized the importance of avoiding interpretations of federal law

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[7] This argument that U.S.-based private arbitrations can be considered "international" and subject to Section 1782 has been advanced in multiple cases. *See, e.g.*, *In re Dubey*, 949 F. Supp. 2d 990, 991–92 (C.D. Cal. 2013) (argument that Section 1782 applied to a Los Angeles–based arbitration proceeding under the American Arbitration Association's International Dispute Resolution Procedures); *In re Grupo Unidos Por El Canala S.A.*, No. 14-MC-80277, 2015 WL 1815251 (N.D. Cal. Apr. 21, 2015) (argument that Section 1782 applied to a Miami-based arbitration conducted under the Rules of Arbitration of the International Chamber of Commerce and the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration). And the Second Circuit has correctly cautioned that an expansive interpretation "would produce anomalous results" by allowing a single foreign arbitrator to convert a purely domestic arbitration into one covered by Section 1782. *Nat'l Broad. Co.*, 165 F.3d at 191 n.9.

that would "sacrific[e] the principal advantage of arbitration—its informality—and mak[e] the process slower, more costly, and more likely to generate procedural morass than final judgment." *Epic Sys. Corp.*, 138 S. Ct. at 1623 (quoting *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 348 (2011)) (alterations in original). Applying Section 1782(a) to private, contract-based arbitration would have exactly that harmful effect, undermining the intent and purpose of the FAA.

E. SERVOTRONICS'S INTERPRETATION OF THE LANGUAGE OF SECTION 1782 IS ERRONEOUS.

Servotronics argues that Section 1782 should be held to authorize district courts to order discovery for use in private, contract-based arbitrations. None of its arguments is persuasive.

1. PASSING USES OF "TRIBUNAL" IN OTHER CONTEXTS DO NOT DETERMINE THE MEANING OF SECTION 1782.

Servotronics cites a handful of opinions in which this Court referred to an arbitration panel as a "tribunal." Servotronics Br. 11–13 (citing *Bernhardt* v. *Polygraphic Co. of Am.*, 350 U.S. 198, 203 (1956); *Baltimore Contractors* v. *Bodinger*, 348 U.S. 176, 185 (1955) (Black, J. dissenting), *overruled by Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U.S. 271 (1988); *Scherk* v. *Alberto-Culver Co.*, 417 U.S. 506, 519 (1974); *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985)). But none of these cases involved the meaning of "foreign or international tribunal" or the application of Section 1782. Further, *Bernhardt*, *Baltimore Contractors*, and *Scherk* merely refer generically and in passing to arbitrations as "tribunals." And *Mitsubishi Motors* post-

dates the 1964 amendment to Section 1782 by more than two decades, and thus could not have informed (or reflected) the ordinary meaning of the term "tribunal," let alone the phrase "foreign or international tribunal," in 1964. *See Wisc. Cent. Ltd.* v. *United States*, 138 S. Ct. 2067, 2074 (2018) (words in a statute "should be interpreted as taking their ordinary, contemporary, common meaning . . . at the time Congress enacted the statute" (omission in original; citation and internal quotation marks omitted).

Two cases on which Servotronics relies—*North American Commercial Co.* v. *United States*, 171 U.S. 110 (1898), and *Louisiana* v. *Mississippi*, 202 U.S. 1 (1906)—actually support Boeing's position. In *North American Commercial Co.*, the Court addressed a "tribunal of arbitration" constituted under the "treaty of 1892" between the United States and Great Britain. 171 U.S. at 131, 133–34. *Louisiana* referred to an "arbitration tribunal" created by treaty to resolve the Alaskan boundary dispute between the United States and the United Kingdom. 202 U.S. at 51. The tribunals mentioned in both of these cases were thus created through the exercise of sovereign authority.

The relevant question in this case is what "foreign or international tribunal" meant in 1964, when Section 1782(a) was amended, and in its full statutory context. *See* Act of Oct. 3, 1964, Pub. L. 88-619, § 9, 78 Stat. 995, 997. As explained above, in 1964, "foreign or international tribunal" would have been understood by Congress, the president, and the public to refer exclusively to an entity that owes its existence and authority to a foreign government or a treaty between

sovereign states. *See supra* at 18–31.[8] And multiple other parts of both Section 1782(a) and related provisions buttress that conclusion. The smattering of cases and other legal references cited by Servotronics—all of which involve other contexts entirely—simply cannot bear the weight that Servotronics would place on them.[9]

2. *INTEL* DID NOT IMPLICITLY DECIDE THE QUESTION PRESENTED.

Although Servotronics repeatedly invokes *Intel*, 542 U.S. 241, that decision is entirely consistent with Respondents' interpretation of Section 1782(a). *Intel* involved a proceeding before the Directorate–General for Competition of the Commission of the European

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[8] According to Servotronics, the Seventh Circuit said "that some dictionaries in use in 1964 defined 'tribunal' to include arbitral tribunals." Servotronics Br. 10. Not so. The Seventh Circuit cited a few modern dictionaries whose definitions could, at least arguably, encompass private arbitral panels. J.A. 86a–87a. But the court cited those definitions to show that the modern definition is "broader" than the definition in 1964. *Ibid.*

[9] The only contemporaneous dictionary definition Servotronics cites is the 1961 edition of Webster's New International Dictionary of the English Language. Servotronics notes that the second definition of "tribunal" 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." Servotronics Br. 11 n.2 (quoting *Webster's New International Dictionary of the English Language* (2d ed. unabridged 1961)). But nothing in that definition suggests that the phrase "foreign or international tribunal" in Section 1782 should be read to include private, contract-based arbitral panels—particularly since the start of the entry on which Servotronics relies specifically refers to state-sponsored entities. To the contrary, the entry uses an example that supports Boeing's arguments: "the Supreme Court is the highest ~ [tribunal] of the United States."

Communities, a public agency with quasi-judicial authority. *Id.* at 258. Under those facts, this Court had no difficulty holding that the Commission qualified as a "foreign or international tribunal" under Section 1782. *Id.* at 258. The Court's reasoning in *Intel* is fully consistent with construing Section 1782 to exclude private, contract-based arbitrations, such as those brought under the CIArb Rules.

Servotronics relies heavily on a parenthetical in *Intel*, which quoted a footnote in an article by Professor Hans Smit, who served as the Reporter to the Rules Commission. The parenthetical states: "[t]he term 'tribunal' . . . includes investigating magistrates, administrative and arbitral tribunals, and quasi-judicial agencies, as well as conventional civil, commercial, criminal, and administrative courts." *Id.* at 258 (quoting Hans Smit, *International Litigation Under the United States Code*, 65 Colum. L. Rev. 1015, 1026 n.71 (1965)). As the Seventh Circuit held, "this reliance is misplaced." J.A. 93a.

There is "no reason to believe that the Court, by quoting a law-review article in a passing parenthetical, was signaling its view that § 1782(a) authorizes district courts to provide discovery assistance in private foreign arbitrations." J.A. 93a. Further, nothing in the parenthetical suggests that the reference to "arbitral tribunals" was meant to include private, contract-based arbitration. In fact, the *opposite* inference is warranted: every other entity mentioned in Professor Smit's list is imbued with government authority. *See* Smit, *supra*, 65 Colum. L. Rev. at 1026 n.71.

Consistent with this view, it is notable that in contemporaneous scholarship, Professor Smit defined an "international tribunal" as a body that "owes both its

existence and its powers to an international agreement" before recommending "a relatively simple amendment to Section 1782 of the Judicial Code, which would make the assistance provided by [Section 270] available to international tribunals generally." Hans Smit, *Assistance Rendered by the United States in Proceedings Before International Tribunals*, 62 Colum. L. Rev. 1264, 1267, 1271–72 (1962). Other scholarship predating the 1964 amendment uses the term "tribunal" similarly to refer to foreign and international governmental or quasi-governmental bodies. *See, e.g.*, *Draft Convention on Judicial Assistance*, 33 Am. J. Int'l L. Sup. 11, 36, 39 (1939); Harry L. Jones, *International Judicial Assistance: Procedural Chaos and a Program for Reform*, 62 Yale L.J. 515, 515 (1953).

Servotronics attempts to recharacterize Professor Smit's contemporaneous views by relying on his subsequent writings, including an article published 34 years after Congress amended Section 1782(a). *See* Servotronics Br. 16 (citing 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 (Spring 1998)). There, Professor Smit asserted that "private arbitral tribunals come within the term the drafters used." Smit, *American Assistance*, *supra*, at 5. As the Second Circuit has correctly and cogently explained, these later writings should not be given any weight in interpreting Section 1782, as they do "not purport to rely upon any special knowledge concerning legislative intent," and their "reasoning" is "unpersuasive." *Nat'l Broad. Co.*, 165 F.3d at 190 n.6 (citation omitted).

3. SERVOTRONICS'S INTERPRETATION OF SECTION 1782 WOULD RESULT IN SERIOUS ADVERSE CONSEQUENCES.

a. Servotronics's interpretation of the statute would swamp the federal courts with applications for discovery under Section 1782. Private, contract-based arbitration is now an established part of the international dispute resolution landscape.[10] In 2019, 869 new cases were submitted to the ICC—a significant increase from the 64 new cases submitted to the ICC each year in the early 1960s. *ICC celebrates case milestone, announces record figures for 2019*, Int'l Chamber of Comm. (Jan. 9, 2020), https://iccwbo.org/media-wall/news-speeches/icc-celebrates-25000th-case-milestone-and-announces-record-figures-for-2019/; Yves Derains, *International Chamber of Commerce Arbitration*, 5 Pace L. Rev. 591, 591 (1985). And in 2018, the total caseload of the top 14 leading international commercial arbitration institutions was more than 9,000. Gary Born, International Commercial Arbitration 92 (3d ed. 2021). Servotronics's proposed interpretation of Section 1782 would provide any and all parties involved in these private, contract-based arbitrations with potential access to discovery through U.S. courts.

Much of the growth of international arbitration has occurred since 1964. A number of today's most popular arbitral organizations—such as the Singapore International Arbitration Centre and the Hong

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[10] *See* Christopher R. Drahozal, *Empirical Findings on International Arbitration: An Overview*, *in* The Oxford Handbook of International Arbitration 649 (2020).

Kong International Arbitration Centre—did not even exist at the time.[11]

The growth in private, contract-based arbitration is largely attributable to the increased enforceability of awards under the New York Convention. As discussed above, the United States had not ratified the New York Convention in 1964, and thus any private, contract-based arbitral awards were subject to a "double exequatur" regime, under which U.S. courts would not enforce the award unless it was first confirmed by a domestic court in the seat of arbitration. Marike R.P. Paulsson, *The 1958 New York Convention in Action* § 1.03 (2016). After the United States ratified the New York Convention in 1970, U.S. courts were empowered—and indeed obligated—to enforce directly any foreign arbitral awards that satisfied the Convention's requirements. *See ibid.* This has, in turn, increased the attractiveness and acceptance of private, contract-based foreign and international arbitration.

b. During the three decades after the 1964 amendment, no one—including those who might have benefitted from broader discovery—appears to have contemplated that Section 1782 could be used in connection with private arbitrations. And, when the issue later began to be litigated, the Second and Fifth Circuits confirmed that understanding. *See Nat'l Broad. Co.*, 165 F.3d at 184; *Biedermann*, 168 F.3d at 880.

The Sixth Circuit upended the status quo two years ago—20 years after *National Broadcasting Co.*

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[11] *Why SIAC*, Singapore Int'l Arbitration Centre (1991), https://siac.org.sg/64-why-siac; *About HKIAC*, Hong Kong Int'l Arbitration Centre (1985), https://www.hkiac.org/about-us.

and *Biedermann*—by holding that Section 1782(a) extended to private, contract-based arbitrations. *See Abdul Latif Jameel Transp. Co.* v. *FedEx Corp.* (*In re Application to Obtain Discovery for Use in Foreign Proceedings*), 939 F.3d 710, 714 (6th Cir. 2019). After that decision in September 2019, parties filed "at least 14 new [Section 1782] cases" involving private arbitrations—compared with "some 65 cases decided" in the preceding 55 years. *See* Institute for Conflict Prevention Br. 12 n.7. Those numbers will increase exponentially if the Court now holds that these arbitrations fall within the scope of Section 1782(a).

c. There is, moreover, no discernible way to limit the consequences that an expanded interpretation of Section 1782 would have for federal district courts.

Servotronics's understanding of the phrase "foreign or international tribunal" could "theoretically encompass even the most informal, unorthodox private dispute resolution proceedings." *Nat'l Broad Co.*, 165 F.3d at 191 n.9. Any organization could claim to be an arbitral "tribunal." One such example is the now-discredited "International Arbitration Center" in Cairo, Egypt, which rendered an $18 billion award against Chevron in 2015 in a proceeding plagued by fraud, corruption, and other irregularities. *See Al-Qarqani* v. *Chevron Corp.*, No. C 18-03297 JSW, 2019 WL 4729467, at *6 (N.D. Cal. Sept. 24, 2019) (refusing to confirm that award under the FAA and New York Convention due to procedural deficiencies and a lack of contractual authority); *see also Al-Qarqani* v. *Arab Am. Oil Co.*, No. 4:18-CV-1807, 2020 WL 6748031, at *4 (S.D. Tex. Nov. 17, 2020) (noting that an Egyptian court later convicted the tribunal members of fraud and other crimes relating to the arbitration). Servo-

tronics would have U.S. district courts expend resources to assist even proceedings that are at best informal and at worst dubious or even fraudulent.

Relying on a district court's discretion to deny Section 1782 requests does not lighten the burden on the federal court system. *Cf.* Brief *Amicus Curiae* of Professor George A. Bermann in Support of Petitioner, at 6, 24, *Servotronics, Inc.* v. *Rolls-Royce PLC*, No. 20-794 (May 13, 2021). A court must still decide whether to exercise that discretion, through an analysis that is often fact-intensive, time-consuming, and laborious. *See, e.g.*, *In re Application to Obtain Discovery*, 939 F.3d at 732; Brief of Professor Yanbai Andrea Wang as *Amicus Curiae* in Support of Neither Party, at 6–13, *Servotronics, Inc.* v. *Rolls-Royce PLC*, No. 20-794 (May 13, 2021). In addition, the uncertainty engendered by such a case-by-case approach is inconsistent with the parties' reasonable expectations when entering into arbitration agreements, and indeed with the very *raison d'être* for such agreements to begin with. Parties choose to arbitrate their disputes because they expect that the proceedings will be governed by the agreed procedural rules and by the evidentiary decisions of the arbitral panel. They do not expect that a U.S. district court might decide to order discovery—even in the face of a ruling such as the one the panel issued here rejecting the need for such discovery—based on a set of indeterminate factors that must be subjectively weighed against one another. *See Intel*, 542 U.S. at 264–65 (factors include "whether the [] request conceals an attempt to circumvent . . . policies of a foreign country or the United States," "the character of the proceedings underway abroad," and whether the request is "unduly intrusive or burdensome").

The ICC has suggested that the views of arbitral panels should be given "great weight" in determining whether to grant Section 1782 applications in connection with private, contract-based arbitrations. *See* Brief *Amicus Curiae* of the International Court of Arbitration of the International Chamber of Commerce In Support of Neither Party, at 9, *Servotronics, Inc.* v. *Rolls-Royce PLC*, No. 20-794 (Jan. 5, 2021). But Section 1782 allows "any interested person" to request discovery—even before the relevant "proceeding" has been initiated. 28 U.S.C. § 1782(a); *see also Intel*, 542 U.S. at 258 ("Section 1782(a) does not limit the provision of judicial assistance to 'pending' adjudicative proceedings."). The ICC's proposed solution therefore cannot be adopted consistent with the text of Section 1782.[12]

d. Moreover, a broad interpretation of Section 1782 would disrupt the core principles of equality and non-discrimination that underpin the international

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[12] Nor would the Fourth Circuit's approach solve the problem. That court treated a private, *ad hoc* arbitration brought under the CIArb rules as a "foreign or international tribunal" on the theory that the U.K. Arbitration Act of 1996, which applies to the arbitration in this case as well, somehow makes the panel a "product of government-conferred authority." *Servotronics, Inc.* v. *Boeing Co.*, 954 F.3d 209, 214 (4th Cir. 2020) (internal quotation marks omitted). The Fourth Circuit's reasoning is directly at odds with this Court's precedents holding that arbitration proceedings like the one at issue here are the product of private agreement, not government-conferred authority. *See supra* at 18–19. Private, contract-based arbitrations derive their authority from the parties' contractual agreement, not from the arbitration laws of the seat of the arbitration, which are irrelevant to determining whether an arbitration is private and contract-based. *See supra* at 19. Significantly, neither Servotronics nor any of its *amici* defend the Fourth Circuit's approach.

commercial arbitration system. In cases where only one party to the arbitration was affiliated with third parties located in the United States, Section 1782 could result in lopsided discovery in favor of the party with no U.S. affiliates. That is, American companies doing business abroad and contracting for a private arbitration could be exposed to public, intrusive, and unequal discovery requests from foreign entities that the private arbitral panel would have limited ability to rectify or control. *See, e.g.*, David W. Rivkin & Barton Legum, *Attempts to Use Section 1782 to Obtain US Discovery in Aid of Foreign Arbitrations*, 14 Arb. Int'l 213, 225–26 (1998) ("If section 1782 were interpreted to permit courts to order full American-style discovery with respect to US-based entities, the calculus of costs and benefits in arbitration would be substantially changed. . . . At the same time, arbitrators could lose their ability to control the scope and the course of the proceedings.").

An expansive interpretation of Section 1782 could seriously disrupt the evidentiary equilibrium between parties from common law and civil law traditions, as embodied in the Rules on the Taking of Evidence in International Arbitration of the International Bar Association ("IBA"). The IBA's rules are applied in the majority of private, contract-based international arbitrations in North America, Asia, and Europe. *See* Roman Khodykin et al., *A Guide to the IBA Rules on the Taking of Evidence in International Arbitration* § 1.22 (2019). The rules require parties to seek only "narrow and specific" categories of documents, and the accompanying commentary notes that "[e]xpansive American–or English–style discovery is generally inappropriate in international arbitration." IBA Rules on the Taking of Evidence in International Arbitration, Art. 3.3 (2020); *Commentary on the Revised Text of the*

2020 IBA Rules on the Taking of Evidence in International Arbitration at 3, 8 (Jan. 2021), https://www.ibanet.org/MediaHandler?id=4F797338-693E-47C7-A92A-1509790ECC9D. The IBA's balance between differing national approaches to discovery is inconsistent with a one-size-fits-all approach that would allow any party to a private, contract-based arbitration abroad to seek expansive discovery in the U.S. courts.

Servotronics's proposed interpretation of Section 1782 will only exacerbate the imbalance described above. The creeping "Americanization" of discovery in private arbitration is causing a backlash in some corners of the globe—particularly among parties and practitioners from the civil law tradition.[13] In 2018, a working group comprising representatives from roughly 30 foreign countries published a first draft of the Rules on the Efficient Conduct of Proceedings in International Arbitration (the "Prague Rules").[14] Those Rules are intended to promote civil law procedures in arbitration and reflect a distaste for expansive party-driven discovery in arbitration. They certainly do not reflect an increase in support for Section 1782 procedures abroad, including in arbitration.

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[13] *See, e.g.*, *Is It Time For A Change?*, Prague Rules (Apr. 20, 2017), https://praguerules.com/news/is-it-time-for-a-change-/ (summarizing a conference panel in which participants "expressed their concern about the [A]mericanization of international arbitration").

[14] *See Rules on the Efficient Conduct of Proceedings in International Arbitration (Prague Rules)* at 2–3, App. I, https://praguerules.com/upload/medialibrary/9dc/9dc31ba7799e26473d92961d926948c9.pdf (as visited June 16, 2021).

CONCLUSION

The Court should dismiss this case as moot or, in the alternative, affirm the judgment of the court of appeals.

Respectfully submitted.

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June 21, 2021

APPENDIX

DICTIONARY DEFINITIONS

A Dictionary of the English and Italian Languages.
By Joseph Baretti.
. . .
Volume I.
London:
Printed for C. Hitch and L. Hawes, R. Baldwin, W. Johnston, W. Owen, J. Richardson, G. Keith, T. Longman, S. Crowder and Co.
P. Davey and B. Law, and H. Woodgate and S. Brookes.
MDCCLX.

Tribuna'le, *s. m.* [luogo dove rifeggono giudici a render ragione] *a tribunal, a judgment-seat, a court of justice.*

A New General English Dictionary; . . . .
Originally begun by the late
Reverend Mr. Thomas Dyche, ...
And Now Finished by William Pardon, Gent.
The Eleventh Edition . . . .
London: Printed for Catherine and Richard Ware
. . . .
MDCCLX.

Tribunal (S.) a court of justice, where offenders are tried, and sentenced to be punished according to their crimes.

Neuman and Baretti's Dictionary of the Spanish and English Languages;

. . .

Fifth Edition, . . .
By M. Seoane, M. D.

. . .

London: . . . 1831.

Tribunal, *sm.* 1. Hall, where judges meet to administer justice. 2. Tribunal, court of justice; judicature.

A New French and English Dictionary.
. . .
By William Cobbett, M.P. for Oldham.
London: Published at 11, Bolt-Court, Fleet-Street;
and May Be Had of All Booksellers.
1833.

Tribunal, *sm.* a Tribunal, a court of justice.

Oxford Latin Dictionary
Fascicle VIII
. . .
Edited by P. G. W. Glare
Oxford
At the Clarendon Press
1982

tribünal . . . . 1 A dais or platform, sometimes portable, on which the magistrate's chair (orig. that of the *tribunus militum*) was placed in Rome and elsewhere in Roman jurisdiction and from which he pronounced official judgements; (meton.) a court of law; a judgement. **b** a platform used for judicial and sim. purposes in military camps, foreign courts, etc. **c** a platform used by other official bodies **d** *pro ~ali*, officially (opp. *de plano*, etc.); sim. *in*, [ ] ~ali.

Webster's New International Dictionary of the English Language (2d ed. 1955)

tri•bu′nal (**trī•bū′năl; n'l; trĭ-**), *n.* [L., fr. *tribunus* a tribune who administered justice; cf. F. *tribunal*. See TRIBUNE OFFICER; cf. TRIBUNE elevated place.]

1. A tribune (see 3d TRIBUNE); specif., the seat of a judge; the bench of which a judge and his associates sit for administering justice; a judgment seat.

[Before] His high *tribunal* thou and I appear. *Gray.*

2. Hence, 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; as, the Supreme Court is the highest *tribunal* of the United States. Cf. HAGUE TRIBUNAL; REVOLUTIONARY TRIBUNAL.

3. That which decides or judges; something which determines or directs a judgment or course of action; as, the *tribunal* of public opinion or of one's own conscience.

4. (. . .) In villages of the Philippine Islands, a kind of town hall or municipal building, also used as a prison, quarters for troops, etc.

Webster's Third New International Dictionary
of the English Language Unabridged
Editor in Chief
Philip Babcock Gove, Ph. D.
and the Merriam-Webster Editorial Staff
G. & C. Merriam Company, *Publishers*
Springfield, Massachusetts, U.S.A.

tribu*nal \. . .\ *n* -s [L, fr. *Tribunus* Roman official, judge] **1:** [ ]TRIBUNE: as **a:** the seat of a judge or one acting as a judge: the bench on which a judge and his associates sit for administering justice **b:** JUDGMENT SEAT {appear before the august and holy ~ of God —J.N.Davies} **2:** 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 {the Supreme Court is the highest ~ of the United States} **3:** something that decides or judges: something that determines or directs a judgment or course of action {the ~ of events —George Santayana} {answerable to no ~ but that of their own judgment —Edith Wharton}

Black's Law Dictionary

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By Henry Campbell Black, M. A.

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Fourth Edition

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West Publishing Co.
1951

LETTERS ROGATORY. A request by one court of another court in an independent jurisdiction, that a witness be examined upon interrogatories sent with the request. Magdanz v. District Court in and for Woodbury County, 222 Iowa 456, 269 N.W. 498, 499, 108 A.L.R. 377. The medium whereby one country, speaking through one of its courts, requests another country, acting through its own courts and by methods of court procedure peculiar thereto and entirely within the latter's control, to assist the administration of justice in the former country. The Signe, D.C.La., 37 F.Supp. 819, 820.

A formal communication in writing, sent by a court in which an action is pending to a court or judge of a foreign country, requesting that the testimony of a witness resident within the jurisdiction of the latter court may be there formally taken under its direction and transmitted to the first court for use in the pending action.

This process was also in use, at an early period, between the several states of the Union. The request rests entirely upon the comity of courts towards each other. See Union Square Bank v. Reichmann, 41 N.Y.S. 602, 9 App.Div. 596.

Black's Law Dictionary (4th ed. 1951)

TRIBUNAL. The seat of a judge; the place where he administers justice. The whole body of judges who compose a jurisdiction; a judicial court; the jurisdiction which the judges exercise. See Foster v. Worcester, 16 Pick. (Mass.) 81.

Roman Law

An elevated seat occupied by the prætor, when he judged, or heard cases in form. Originally a kind of stage made of wood in the form of a square, and movable, but afterwards built of stone in the form of a semicircle. Adams, Rom. Ant. 132, 133.