

IN THE SUPREME COURT OF THE UNITED STATES

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No. 18-459

EMULEX CORPORATION, ET AL., PETITIONERS

v.

GARY VARJABEDIAN, ET AL.

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

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE  
AND FOR DIVIDED ARGUMENT

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Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case and that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae in support of neither party. Petitioners and respondents have consented to this motion, and each side has agreed to cede five minutes of its argument time to the United States.

1. This case presents the question whether Section 14(e) of the Securities Exchange Act of 1934, 15 U.S.C. 78n(e), supports a private right of action based on allegations of a negligent misstatement or omission made in connection with a tender offer. The United States filed a brief contending that Section 14(e) prohibits negligent misstatements or omissions of material fact (as respondents argue), but that Section 14(e) does not create a private right of action (as petitioners argue).

2. The United States has a substantial interest in the resolution of the question presented. The United States, through the Department of Justice and the Securities and Exchange Commission (Commission), administers and enforces the federal securities laws. Because the Court's decision may determine the standard of proof that applies to all civil claims brought under Section 14(e), including those brought by the Commission, the United States has a substantial interest in this case.

The United States has participated in oral argument as an amicus curiae in multiple cases before this Court involving the construction and administration of the federal securities laws. See, e.g., Digital Realty Trust, Inc. v. Somers, 138 S. Ct. 767 (2018); Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund, 135 S. Ct. 1318 (2015); Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258 (2014). In light of the substantial federal interest in the question presented, the United States'

participation at oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

MARCH 2019