No. 25-944

IN THE

Supreme Court of the United States

ROBINHOOD MARKETS, INC., ET AL.,
Petitioners,

v.

VINOD SODHA, ET AL.,
Respondents.

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

BRIEF FOR WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONERS

CORY L. ANDREWS
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave., NW
Washington, DC 20036

MARK C. FLEMING
Counsel of Record
TIMOTHY J. PERLA
PETER A. SPAETH
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
mark.fleming@wilmerhale.com

MARK L. HANIN
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007

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INTEREST OF AMICUS CURIAE[1]

Washington Legal Foundation (WLF) is a nonprofit, public-interest law firm and policy center with supporters nationwide. Founded in 1977, WLF promotes free enterprise, individual rights, limited government, and the rule of law. WLF often appears as an amicus in important disputes over the proper scope of the federal securities laws. *See*, *e.g.*, *Slack Techs., LLC* v. *Pirani*, 598 U.S. 759 (2023) (No. 22-200); *Goldman Sachs Grp., Inc.* v. *Arkansas Tchr. Ret. Sys.*, 594 U.S. 113 (2021) (No. 20-222); *Sundaram* v. *Freshworks, Inc.*, No. 25-3127 (9th Cir. 2025). And WLF's Legal Studies Division routinely publishes papers by outside experts on federal securities law. *See*, *e.g.*, Taylor et al., Pirani v. Slack Technologies, Inc., et al.*: Ninth Circuit Cuts Securities Plaintiffs Slack on Standing*, WLF Legal Backgrounder (Mar. 25, 2022), https://perma.cc/FP4J-3A3M.

SUMMARY OF ARGUMENT

The Court should grant the petition and reverse the Ninth Circuit's erroneous interpretation of Section 11 of the Securities Act of 1933 (1933 Act) for two reasons.

First, the Ninth Circuit misconstrued Section 11's liability standard for omissions by improperly collapsing the duty-to-disclose inquiry into a pure materiality inquiry, thereby reading the separate "misleading" statement requirement out of the statute. Collapsing these inquiries turns on a mistaken assumption that prior,

[1] Under Supreme Court Rule 37.2, counsel for Petitioners and Respondents were provided timely notice of this brief. No person other than Amicus Curiae or its counsel drafted or contributed money for preparing or submitting this brief.

backward-looking statements describing financial results or metrics *necessarily* imply that past performance is continuing and will continue. That assumption is unfounded. The Ninth Circuit's reading would effectively impose on stock issuers a perpetual duty to disclose any material intra-quarter results prior to an initial public offering (IPO)—an onerous requirement that departs from the SEC's long-standing framework for IPOs. And—given the identity of the standards for finding statements misleading by omission under Section 11 and under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5—the decision threatens to disrupt the established regime of regular, quarterly financial reporting by expanding the traditionally narrow "duty to update."

Second, the Ninth Circuit's reading of Section 11, if left in place, would likely disincentivize companies from pursuing IPOs by increasing the already significant costs and uncertainties surrounding IPOs at a time when U.S. IPO activity is near 30-year lows, securities litigation risks and settlement values are high, and companies face costly and onerous regulatory burdens. Letting the Ninth Circuit decision stand could further chill IPO activity to the detriment of U.S. capital markets and investors.

ARGUMENT

I. REVIEW IS NEEDED TO CONFIRM THAT BACKWARD-LOOKING FINANCIAL STATEMENTS SAY NOTHING ABOUT CONTINUED PERFORMANCE.

The Ninth Circuit's reading of Section 11—which collapses the duty-to-disclose inquiry into a materiality inquiry—rests on a mistaken assumption about what presentations of historical financial results imply about the future. Once that assumption is corrected and

statements of prior financial results are understood as most courts have long construed them—to convey only historical information—it becomes clear why the court of appeals' reading of Section 11 is unsound and should be rejected.

Section 11 provides that an issuer may be liable if "any part of the registration statement, when such part became effective, … omitted to state [i] a material fact … [ii] necessary to make the statements therein not misleading." 15 U.S.C. § 77k(a). The decision below reasoned that this language "does not require us to draw a distinction between materiality and the duty to disclose" to assess Section 11 liability for omitting financial information received before completion of an IPO. Pet. App. 24a. According to this syllogism, which draws heavily on Second Circuit decisions, whenever an issuer makes a statement about a financial metric or a result for a particular period and new information later emerges for a more recent period (but not affecting the prior statement's accuracy), the prior statement *inevitably* becomes misleading unless the new information is also disclosed. Pet. App. 22a-29a. The Ninth Circuit found it "'difficult to imagine a circumstance where [a] prior statement would not be rendered misleading' in light of an undisclosed event if the 'undisclosed information is material.'" Pet. App. 23a (quoting *In re Time Warner Inc. Sec. Litig.*, 9 F.3d 259, 267 (2d Cir. 1993)). Under this reading, Section 11's duty-to-disclose inquiry for financial information inevitably collapses into the materiality prong, without *any* analysis needed as to whether an omission, assumed to be material, would or would not "necessar[ily]" render a prior statement "misleading." 15 U.S.C. § 77k(a).

But the Ninth Circuit's holding—which extends to *all* cases involving allegations of a prior statement of

financial results followed by some material financial event—rests on a misunderstanding of what prior, backward-looking statements about financial results or metrics necessarily say or imply. The Ninth Circuit assumes, without saying, that the prior statement of financial results suggests that the past performance will continue indefinitely. For example, suppose an issuer reports $10 million of revenue for the first quarter of 2026. Further suppose that the IPO occurs a month or two into the second quarter, before the issuer is required to report revenue for that quarter, but that interim information suggests that second quarter revenue is not on track to match the first quarter. The statement about the first quarter remains fully accurate—it correctly disclosed the revenue earned for the first quarter. The statement could be rendered misleading by the new information only if it were read to imply something about the future that no longer holds. If one reads the statement to say nothing about the future, then new information cannot render it misleading. Yet the Ninth Circuit's rule would impose liability for non-disclosure merely because the omitted new information arguably is material—that is, something investors would want to know. *See Matrixx Initiatives, Inc.* v. *Siracusano*, 563 U.S. 27, 38 (2011) (materiality defined as "a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.").

But courts have long recognized in the context of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5—where the standard for statements that are misleading by omission is the same as that under

Section 11[2]—that backward-looking, accurate statements of financial results convey *nothing* about the future. As the Second Circuit has held, where "statements referred only to past events or conditions and did not imply anything about future circumstances, there was no duty to update." *IBEW Loc. Union No. 58 Pension Tr. Fund & Annuity Fund v. Royal Bank of Scotland Grp., PLC*, 783 F.3d 383, 390 (2d Cir. 2015). And as the Sixth Circuit has explained, "[t]he disclosure of accurate historical data does not become misleading even if less favorable results might be predictable by the company in the future." *Kolominsky* v. *Root, Inc.*, 100 F.4th 675, 686 (6th Cir.), *cert. dismissed sub nom. Plumbers Loc. 290 Pension Tr.* v. *Root, Inc.*, 145 S. Ct. 838 (2024); *accord McDonald* v. *Kinder-Morgan, Inc.*, 287 F.3d 992, 998 (10th Cir. 2002) ("It is well-established that the accurate reporting of historic successes does not give rise to a duty to further disclose contingencies that might alter the revenue picture in the future."); *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1432 (3d Cir. 1997) (Alito, J.) (similar); *Shaw* v. *Digital Equip. Corp.*, 82 F.3d 1194, 1202 (1st Cir. 1996) (similar); *Stransky* v. *Cummins Engine Co.*, 51 F.3d 1329, 1332 n.3 (7th Cir. 1995), *as amended* (Apr. 7, 1995) ("No duty to update an historical statement can logically exist. By definition an historical statement is addressing only matters at the time of the statement.").

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[2] As the decision below notes, Pet. App. 22a, the language in the "misleading" prong of Section 11's omissions clause "is nearly identical" to that in Rule 10b-5, *see* 17 C.F.R. § 240.10b-5(b), and courts apply the same standards in both contexts, *see, e.g.*, *City of Warren Police & Fire Ret. Sys.* v. *Prudential Fin., Inc.*, 70 F.4th 668, 686 (3d Cir. 2023); *Shaw* v. *Digital Equip. Corp.*, 82 F.3d 1194, 1216-1217 (1st Cir. 1996).

Indeed, given the identical standards for finding a statement misleading by omission under both Section 11 and Rule 10b-5, the Ninth Circuit's rule not only affects IPOs but will almost inevitably spill over into Rule 10b-5 cases, with the same or even greater deleterious effects. After all, Rule 10b-5 applies to all open market purchases, *see* 17 C.F.R. § 240.10b-5, and issuers continuously receive intra-quarter financial information. The SEC has identified various types of news that give rise to ongoing disclosure duties, such as under Form 8-K, *see id.* §§ 240.13a-11, 240.15d-11, but never interim financial numbers. If courts applied the Ninth Circuit's view of Section 11 in the Rule 10b-5 context, it would set up a clash with the regulator's longstanding position about what needs to be disclosed intra-quarter, and threaten a regime where typically financial numbers are reported on a regular, quarterly basis. For the reasons explained, *see infra* pp.11-15, such a rule would impose undue burdens on reporting companies.

It is accordingly easy to "'imagine'" circumstances that the Ninth Circuit could not, Pet. App. 23a—namely, when (i) a later event is *material* in the sense that investors would consider it important to the "total mix" of information, *Matrixx Initiatives*, 563 U.S. at 38, yet (ii) its omission would not render a prior statement misleading, and so there would be no duty to disclose. Indeed, this would be the case any time a company accurately reported revenue or any other financial metric for a historical period that has ended, yet subsequent events suggested worse current or future performance. As noted above, however, courts have consistently found that such circumstances do not give rise to a duty to update prior to the next regular reporting period. *See supra* pp.4-5.

The Ninth Circuit's conclusion that materiality alone determines whether interim financial results must be disclosed in the type of case presented here essentially creates an omnibus duty of disclosure that misreads the statute and departs from the SEC's regulatory framework for IPOs. The SEC dictates which financial information an issuer must include in Form S-1, including for which years and quarters and how far back such information must go. *See* 17 C.F.R. § 239.1; 17 C.F.R. Parts 210 (Regulation S-X), 229 (Regulation S-K). If the SEC wanted to require additional interim data for the current quarter in which the IPO takes place, it would have said so.

In short, Section 11's separate requirements that liability turns on omission of information that is both material *and* that renders a statement in the IPO materials misleading can and should—as the statute's language demands—play independent roles in a duty-to-disclose analysis. The Ninth Circuit was wrong to collapse these two inquiries.[3]

II. REVIEW IS NEEDED BECAUSE THE NINTH CIRCUIT'S ERRONEOUS CONSTRUCTION OF SECTION 11 WILL DISCOURAGE IPOS.

If the Ninth Circuit's erroneous reading of Section 11 is left in place, the costs, risks, and uncertainties of IPOs—which are already high—would likely increase, chilling IPO activity and harming the U.S. economy at a time when litigation risks and securities settlement costs are ballooning; regulatory burdens, particularly in

[3] Of course, rejecting the Ninth Circuit's flawed analysis would not rule out a requirement that current adverse material information be disclosed under certain other regulatory provisions.

the financial sector, are high; and the number of IPOs is near 30-year lows.

A. Newly Public Companies Face Daunting Litigation Risks.

Taking a company public creates risks of class-action litigation—which are already steep, but which the decision below exacerbates by expanding avenues for challenging IPOs under Section 11 and, by extension, misleading omissions under Rule 10b-5. "[T]he threat of protracted and often frivolous securities class action litigation has contributed to a decades-long decline in IPOs."[4] To avoid "becoming the target of vexatious securities litigation," more and more companies "[are] choos[ing] private capital transactions or strategic combinations in lieu of going public, a phenomenon that has had significant detrimental effects on both the economy in general and small investors in particular."[5]

As then-SEC Commissioner Elad Roisman observed in 2019, while "the risk of shareholder litigation has always been a cost that public companies have to anticipate[,]" "today such litigation is less of a risk and more of a certainty."[6] He quoted the founder of Blue Bottle Coffee—which sold a majority stake to

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[4] Smilan & Locker, *Saying So Long to State Court Securities Litigation*, Harv. Law Sch. Forum on Corp. Governance (Feb. 11, 2019), https://perma.cc/E3QN-Q2QC.

[5] *Id.*

[6] SEC Commissioner Elad L. Roisman, *Remarks at SEC Speaks: Encouraging Smaller Entrants to Our Capital Markets* (Apr. 8, 2019), https://perma.cc/E6XE-7MKG.

Nestlé in 2017—as saying that taking a company public "'seems like a way of living in hell without dying.'"[7]

The data support this colorful simile. After the 2008 financial crisis, IPOs began facing increased litigation, with 20 percent of companies subjected to a core litigation filing within four years of an IPO, compared to 14 percent in 2001-2008 and 12.6 percent in 1996-2000.[8] With respect to securities litigation generally, including IPO- and non-IPO-related contexts, since 2015, at least 168 securities lawsuits have been filed each year, with a high of 268 in 2019.[9] Overall, securities class actions increased 23 percent between 2022 and 2024.[10] Litigation continues to ensnare many new public companies in particular, with higher-value IPOs disproportionately sued. "In recent years, between 1/4 to 1/3 of new public companies have been hit with some

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[7] *Id.* An influential early study of securities settlements found that settlement values secured by plaintiffs' lawyers are often unconnected to the merits of the underlying claims. This "amounts to a grotesquely inefficient form of insurance against large stock market losses by giving investors, in effect, a legally mandated 'partial put' that entitles them to recover a portion of such losses from issuers. The social value of a system of compulsory insurance for market losses is dubious at best." Alexander, *Do the Merits Matter: A Study of Settlements in Securities Class Actions*, 43 Stan. L. Rev. 497, 501 (1991).

[8] Cornerstone Research, *Securities Class Action Filings: 2019 Year in Review* 28, https://perma.cc/W8S8-RJMW. Core filings are "all federal and state 1933 Act securities class actions excluding those defined as M&A filings." *Id.* at 42.

[9] Sawyer, *D&O Databox 2024 Year-End Report* 2 (2025), https://perma.cc/LY3F-YK68. These figures are not limited to the 1933 Act.

[10] *Id.*

form of securities class action within five years of IPO."[11] Between 2019 and 2023, IPOs valued between $250 million and $1 billion had a 21 percent chance of suit, while those valued at over $1 billion had a *49 percent chance* of being sued.[12]

Misrepresentation claims are especially common in securities class actions. Between 2021 and 2025, the largest subcategory of Rule 10b-5, Section 11, or Section 12 suits—representing between 29 and 39 percent of federal class actions filed in each year—included allegations that the company had misled investors about future performance.[13]

B. Securities Litigation Settlement Price Tags Have Ballooned.

A closely related cost that firms must weigh when considering going public is the ballooning price of securities settlements. In 2018, the median cost of settled securities class actions (excluding merger objections) was $13 million, "a near record and more than twice the $6 million median" in 2017.[14] The average securities settlement cost, at $31 million, more than

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[11] Newell, *Strict Liability Energy: IPO Litigation and Risk Management*, Woodruff Sawyer (Mar. 6, 2024), https://perma.cc/22NF-8TLD.

[12] *Id.*

[13] Flores & Starykh, *Recent Trends in Securities Class Action Litigation: H1 2025 Update* 7, NERA (July 29, 2025), https://tinyurl.com/ts2d5s7u.

[14] Chubb, *From Nuisance to Menace: The Rising Tide of Securities Class Action Litigation* 4 (June 2019), https://perma.cc/QJN2-GXF9.

doubled the median cost (in 2018 dollars).[15] Settlement costs have risen steadily ever since. Average securities litigation settlements increased by around 133 percent in recent years in inflation-adjusted terms, jumping (in 2025 dollars) from $24 million in 2021 to $41 million in 2022, $36 million in 2023, $44 million in 2024, and then $56 million by the first half of 2025.[16] The median settlement amount for cases with only 1933 Act claims ($32.5 million) reached an all-time high in 2025 and was 3.1 times the median for the prior nine years.[17]

Other metrics reflect similarly alarming trends. While the share of securities settlements valued at over $20 million held steady at 27 to 31 percent between 2015 and 2021, year-on-year increases have been the norm ever since.[18] Securities settlements over $20 million grew to 33 percent of total settlements in 2022; 39 percent in 2023; and 44 percent in 2024.[19] The consulting firm Woodruff Sawyer described 2024 as a "record-breaking year for settlements," noting that "settlement activity in 2024 was a head-turner."[20] In 2024 alone, there were 80 securities settlements totaling $4.1 billion, "the highest annual dollar amount paid out in securities

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[15] Flores & Starykh, *Recent Trends* 15, *supra* (excluding settlements of $1 billion or more, merger objections, crypto unregistered securities, and settlements for $0 to the class).

[16] *Id.*

[17] Cornerstone Research, *2025 Review & Analysis: Securities Class Action Settlements* 8, https://perma.cc/CTT4-GHAW.

[18] Sawyer, *D&O Databox 2024 Year-End Report* 8, *supra*.

[19] *Id.*

[20] *Id.* at 2, 8.

class action settlement history (excluding settlements of a billion dollars or more)."[21]

C. Unless Reversed, The Decision Below Will Increase Already High Regulatory Burdens, Further Discouraging IPOs.

Unless this Court corrects the Ninth Circuit's course, the proposition that materiality alone determines whether an accurate historical statement becomes misleading-by-omission under Section 11 stands to increase costs for companies considering IPOs at a time when those costs are already sky-high. By deviating from Congress's choice to limit liability for omissions in IPO materials to scenarios when an omission affirmatively renders an actual statement misleading (or when a company is subject to a recognized duty to disclose), the Ninth Circuit's decision opens up new avenues for opportunistic plaintiffs to bring Section 11 lawsuits by essentially creating a free-standing duty to disclose.

Firms do not operate in a vacuum. They must decide how to allocate capital, take risks, and weigh the upsides and costs of going public given their overall regulatory costs and opportunity costs. Driving up those costs for IPOs—as the Ninth Circuit's reading of Section 11 does—will deter more firms from going public to the detriment of U.S. capital markets and investors.

If an issuer's failure to disclose *any* material financial development can be spun as a Section 11 violation (so long as it concerns the same subject as a previous historical report), companies will face the

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[21] *Id.* at 8. NERA puts the 2024 securities class action settlement figure at $3.9 billion. *See* Flores & Starykh, *Recent Trends* 2, *supra*.

unrealistic burden of constantly having to evaluate newly emerging information for materiality as IPO deadlines approach. This would mean no repose and no finality for filings, as companies would in effect be under a continuous or rolling-disclosure regime—*not* the regime contemplated by the SEC for IPOs. *See supra* pp.5-6.

Worse still, "materiality" is anything but an easy-to-apply standard, as it covers *any* information regarding which it is "substantially likely that a reasonable investor would have viewed" it as "having significantly altered the total mix of information made available." *Matrixx Initiatives*, 563 U.S. at 38, 47 (quotation marks omitted). Except at the extremes, this standard provides little practical guidance. Executives and other personnel responsible for disclosures would face a Hobson's choice of risking litigation for under-disclosure or "bury[ing] … shareholders in an avalanche of trivial information." *TSC Indus., Inc.* v. *Northway, Inc.*, 426 U.S. 438, 448-449 (1976); *see also* Paredes, *Blinded by the Light: Information Overload and Its Consequences for Securities Regulation*, 81 Wash. U. L. Q. 417 (2003) (discussing problems and inefficiencies of disclosure overload in securities regulation).

Regulatory burdens on U.S. firms are already heavy, as various metrics show. The U.S. Business Roundtable, an association of over 200 CEOs of leading American companies, summarized the point in a letter to the U.S. Office of Management and Budget (OMB): "The cumulative burden of federal regulation imposes a significant drag on the U.S. economy—reducing capital investment, stifling innovation and complicating

compliance for businesses of all sizes."[22] The numbers support this assessment. An October 2023 National Association of Manufacturers (NAM) report estimated total regulatory costs in the U.S. at $3.1 ***trillion*** for 2022 in 2023 dollars.[23] The Competitive Enterprise Institute (CEI) has put that figure at $2.2 ***trillion*** for 2024, reflecting 7.3 percent of U.S. GDP in 2024, or 61 percent of all corporate pretax profits.[24] If the U.S. regulatory burden were a country, its GDP would slightly exceed Canada's. *CEI Study* 26-27.

Financial regulations are a major culprit. Compliance with SEC regulations is already costly for companies, including for issuers preparing IPO materials; the Ninth Circuit's decision would only exacerbate such costs. According to OMB's estimates, between 2008 and 2023, the cost of "major" rules promulgated by the SEC totaled nearly $229 billion in 2025 dollars. Business Roundtable Letter, at 2. The U.S. Government Accountability Office has observed that public company compliance with Section 404 of the Sarbanes-Oxley Act, 15 U.S.C. § 7262, places a disproportionate burden on smaller firms.[25] More

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[22] Letter from U.S. Business Roundtable to OMB, at 2 (May 12, 2025) (Business Roundtable Letter), https://tinyurl.com/mb5w76p2.

[23] NAM, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business* 4 (Oct. 2023) (*NAM Study*), https://perma.cc/2WT2-BNXD.

[24] Crews Jr., *Ten Thousand Commandments 2025*, at 7, Competitive Enterprise Inst. (Apr. 24, 2025) (*CEI Study*), https://perma.cc/2JGC-6U26.

[25] U.S. Gov't Accountability Off., GAO-25-107500, *Sarbanes-Oxley Act Compliance Costs Are Higher for Larger Companies but More Burdensome for Smaller Ones* 9 (June 2025) (survey finding

broadly, regulatory costs reflect a U-shaped distribution, such that firms with around 500 employees "face[d] compliance costs that are about 40 percent higher as a share of total wages compared to small or large firms."[26] For the median U.S. public company, the net present value of its total compliance burdens amounted to over four percent of its market capitalization.[27] Other studies have found that "regulatory restrictions dampen economic growth by 0.8% per year." Business Roundtable Letter, at 2-4.

When it comes to IPOs, filing IPO paperwork "can take many years and cost millions of dollars to complete."[28] The SEC itself estimated in 2015 that even the smallest tier of IPOs with offerings up to $20 million must fill out disclosures estimated to take 748 hours to complete.[29] And "[a] 2022 report from the American Council for Capital Formation found that at the end of 2019 there were at least 800 fewer public companies in

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firms operating in single location averaged around $700,000 in internal compliance costs while those with 10 or more locations averaged around $1.6 million), https://tinyurl.com/52psp2dy.

[26] Trebbi et al., *The Cost of Regulatory Compliance in the United States* 1 (July 2023), https://perma.cc/9T4E-2D96.

[27] Ewens et al., *Regulatory Costs of Being Public: Evidence from Bunching Estimation* 35-36, Working Paper 29143, Nat'l Bureau of Econ. Rsch. (Aug. 2011), https://perma.cc/8X52-2SA5.

[28] Michel & Kruse, *The Case for Micro-Offerings: A* Commonsense *Exemption for America's Smallest Businesses* 1, CATO Institute (Jan. 20, 2026), https://tinyurl.com/yrvmvxvz.

[29] *Id.* at 2.

the U.S. because of the high cost of mandatory reporting under our securities laws."[30]

If more were needed, compliance burdens in terms of hours spent paint a no less striking picture. Between January 1980 and December 2020, Americans spent "292.1 billion hours on preparing and filing 2.24 trillion forms[] to comply with 36,702 regulations."[31] Looking across the regulatory landscape, the U.S. government has estimated that, in 2023, "10.5 billion hours were required to complete mandatory paperwork from 39 departments, agencies, and commissions," amounting to nearly 15,000 human lifetimes. *CEI Study* 7, 20-21. As for financial compliance, NAM survey respondents selected financial regulations as the third-most frequent "[h]ighest-[c]ost" compliance category after environment/energy and labor. *NAM Study* 16. And the SEC has reported that, as of April 2021, companies spend 14.2 million hours annually just to comply with Form 10-K disclosure requirements.[32]

Reading Section 11 (and, by extension, Rule 10b-5) to impose an open-ended obligation on public companies to retroactively amend, correct, or supplement prior disclosures *whenever* any later event is arguably "material" to anything previously disclosed would exacerbate the daunting burdens weighing down U.S. businesses as they consider IPOs.

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[30] U.S. Chamber of Commerce, *Unlocking America's Capital Markets: Fueling Economic Growth and Innovation* 20 (June 3, 2025), https://perma.cc/LQJ9-TULD.

[31] Kalmenovitz, *Regulatory Intensity and Firm-Specific Exposure* 1-2 (last revised Aug. 29, 2023), https://tinyurl.com/yyuh9wxz.

[32] *Id.* at 1.

D. IPOs Are Near 30-Year Lows.

The Ninth Circuit's reading of Section 11 would inflate the risks and costs of taking companies public when IPO activity in the United States is near 30-year lows. More domestic U.S. firms were listed on major U.S. stock exchanges in 1980 than in 2024,[33] and the number of U.S. public companies has declined by around half since the late 1990s.[34] Highlighting the "ever-growing divide between the public and private markets," then-SEC Commissioner Caroline Crenshaw lamented in 2022 the "increasing trend … that fewer companies are going public, small—and mid-sized IPOs are less frequent, and companies are staying private for longer."[35]

The macro trend reflects relatively stagnant IPO numbers for decades (excepting the low-rate, pandemic-era upswell in IPO activity during 2020-2021). From 2014 through 2024, the number of IPO filings has fluctuated, depending on the exact figures used, between around 155 and 355 (again, except for 2020-2021).[36] Expanding the time horizon to a quarter-century reflects the same general pattern, with the

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[33] Ritter, *Number of Domestic Companies Listed on Major U.S. Exchanges, 1980-2024*, https://perma.cc/3PKN-U7T6.

[34] *See also* U.S. Chamber of Commerce, *Unlocking America's Capital Markets: Fueling Economic Growth and Innovation* 6, *supra*.

[35] SEC Commissioner Caroline A. Crenshaw, Remarks *at Virtual Roundtable on the Future of Going Public and Expanding Investor Opportunities: A Comparative Discussion on IPOs and the Rise of SPACs* (Apr. 28, 2022), https://perma.cc/X5WH-AMFC.

[36] *See* SEC, *IPOs: Number and Proceeds* (Dec. 22, 2025), https://tinyurl.com/2pn98u4u.

number of IPO filings ranging from roughly 60 to 450.[37] Although the total numbers of IPOs ticked upward in 2025,[38] the top-line figure of around 350 IPOs in 2025 still falls within the historical range noted above. Based on Professor Jay Ritter's authoritative analysis, just 90 operating companies went public in the United States in 2025, accounting for various sensible exclusions.[39] As another recent analysis put it, despite "[a] handful of high-profile IPOs" in 2025, "'these wins were the exception rather than the rule.'"[40]

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The Ninth Circuit's mistaken reading of Section 11, if left in place, would likely increase litigation risks, anticipated settlement costs, and other expenses associated with going public (such as D&O insurance) for newly public companies. These costs would only further disincentivize IPOs. In such an environment, given that "stability and reliance are essential components of valuation and expectation for financial actors," *California Public Employees' Retirement System* v. *ANZ Securities, Inc.*, 582 U.S. 497, 515 (2017),

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[37] *Id.*

[38] *See, e.g.*, DePietto & Levy, *2025–A Pivotal, Resurgent Year for U.S. Equities*, S&P Global (Jan. 16, 2026), https://tinyurl.com/3by5bwya.

[39] *See Initial Public Offerings: Updated Statistics* 2 (Feb. 26, 2026) (Professor Ritter's tabulation of 90 IPOs in 2025 excludes "ADRs, natural resource limited partnerships and trusts, closed-end funds, REITs, SPACs, banks and S&Ls, unit offers, small best efforts deals, penny stocks (offer price of less than $5 per share), and stocks not listed on Nasdaq or the NYSE."), https://perma.cc/EW9T-AN8Z.

[40] Contreras, *A New Report Says Don't Believe the Hype About IPOs Just Yet*, INC. (Jan. 28, 2026), https://tinyurl.com/3fd9w2y7.

executives will be more likely to keep companies private and pursue private financing. That would deprive public markets and ordinary investors of opportunities to benefit from new, potentially successful business ventures. It would also mean less transparency and publicly available information about those companies. Simply put, leaving in place the Ninth Circuit's erroneous construction of Section 11 would make IPOs in the United States costlier and less likely, to the detriment of American capital markets.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

CORY L. ANDREWS
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave., NW
Washington, DC 20036

MARK C. FLEMING
Counsel of Record
TIMOTHY J. PERLA
PETER A. SPAETH
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000
mark.fleming@wilmerhale.com

MARK L. HANIN
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007

MARCH 2026