No. 25-977

In The Supreme Court of the United States

JOHNSON & JOHNSON, ET AL.,

Petitioners,

v.

SAN DIEGO COUNTY EMPLOYEES RETIREMENT ASSOCIATION, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF AMICUS CURIAE WASHINGTON LEGAL FOUNDATION IN SUPPORT OF PETITIONERS

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

WILLIAM D. MARSH
ALLEN OVERY SHEARMAN STERLING US LLP
2601 Olive St., 17th Floor
Dallas, TX 75201

LYLE ROBERTS
Counsel of Record
CASEY M. DETERMAN
ALLEN OVERY SHEARMAN STERLING US LLP
1101 New York Ave., NW
Washington, DC 20005
(202) 508-8108
lyle.roberts@aoshearman.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Regulations

Other Authorities

INTEREST OF AMICUS CURIAE

Washington Legal Foundation (WLF) is a nonprofit, public-interest law firm and policy center with supporters nationwide.[1] Founded in 1977, WLF promotes and defends free enterprise, individual rights, limited government, and the rule of law. WLF often appears as an amicus before this Court and federal appellate courts across the country over the proper scope of the federal securities laws. *See, e.g.*, *Goldman Sachs Grp., Inc. v. Ark. Tchr. Ret. Sys.*, 594 U.S. 113 (2021). WLF believes that if not addressed by this Court, the decision below will widen an existing divide among the circuit courts on proper application of the *Basic* presumption and work severe prejudice to a defendant's ability to defeat class certification in securities fraud cases asserting claims under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j, and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5.

[1] No party's counsel authored any part of this brief. No one, apart from WLF or its counsel, contributed money to prepare or submit this brief. All parties received timely notice of WLF's intent to file this brief.

REASONS FOR GRANTING THE PETITION

The decision below marks a significant step backwards in the 40-year saga of the *Basic* presumption—a doctrine created by the Court to facilitate class treatment of securities fraud claims. *See Basic Inc. v. Levinson*, 485 U.S. 224, 245 (1988). The *Basic* presumption allows securities fraud plaintiffs to claim that they were defrauded in reliance "on the integrity of the price set by the market" because a false statement distorted the market price. *Id.* In effect, the presumption dispenses with individualized questions about whether a fraudulent statement impacted any given claimant's decision to transact in a stock, which normally would preclude class certification.

But the *Basic* presumption rests on a key factual premise—that is, "in an efficient market," a stock price "reflects any public and material information about the company." *Goldman*, 594 U.S. at 130 (Gorsuch, J., concurring). If that were not the case, the *Basic* presumption would be untenable as there would be no basis for presuming the market price for the stock was distorted by a false statement.

The Third Circuit undermined *Basic* by divorcing the *Basic* presumption from efficient market principles in so-called "inflation-maintenance" cases where the plaintiff points to a "back-end price drop" as a sign of price distortion. Assuming an efficient market, an inflation-maintenance theory should withstand scrutiny only if the plaintiff can tie the price drop to the disclosure of *new* information revealing the falsity of a prior statement. But here the Third Circuit held that the

back-end price drop need not result from the disclosure of new information, so long as the plaintiff alleges that the market was presented with some sort of "new signal," no matter that the "new signal" came from the mere republication of stale news already digested by an efficient market.

The decision below represents the latest in a growing circuit split on the bounds of the *Basic* presumption. On one hand, the First, Second, Fourth, and Eleventh Circuits—consistent with this Court's jurisprudence—all have issued decisions reaffirming that in an efficient market, old news cannot move the stock price, even if republished with new gloss by a different source. Yet the Ninth Circuit and now the Third Circuit have both issued decisions that open the door to "new signal" theories that ignore what the market already knew before the stock price fell.

Besides sowing further division among the lower courts, the decision below has serious ramifications. Without clarification, the decision has the potential to infect related elements of securities fraud claims and expose defendants to undue liability from overly expansive class periods.

Even worse, the decision will invite the very type of abusive securities fraud cases that Congress and the Court have worked to eliminate. Without proper guardrails in the inflation-maintenance context, a plaintiff will simply identify a prior statement loosely related to an issue that precipitated a stock drop and claim the statement was fraudulent. In that scenario, the price drop may reflect only a negative market reaction to *bad* news (*e.g.*, a large jury verdict as in this case), rather than a reaction to

new news revelatory of fraud, but that still will suffice for class certification. As a result, companies will have to deal with immense pressure to settle even meritless securities fraud class actions.

While this brief focuses on the Third Circuit's flawed application of the *Basic* presumption, WLF also fully supports the Petition's arguments that the Third Circuit misapplied *Goldman*'s "mismatch" test. *See* Pet. at 14, 18–21. The Court should grant the petition to clarify both *Goldman*'s test and the correct application of the *Basic* presumption.

ARGUMENT

I. The Court should grant the Petition to clarify proper application of the *Basic* presumption.

A. The Court created the *Basic* presumption to facilitate securities fraud class actions but has had to revisit *Basic* on several occasions.

Before certifying a class under Rule 23(b)(3), a court must find that "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). Securities fraud claims under Section 10(b) of the Exchange Act and Rule 10b-5 require claimants to prove reliance—*i.e.*, that they relied on the alleged misstatement at issue and, but for the alleged misstatement, they would not have purchased the security. *Halliburton Co. v. Erica P. John Fund, Inc.* (*Halliburton II*), 573 U.S. 258, 263 (2014). "[T]he requirement that Rule 10b-5 plaintiffs establish

reliance would ordinarily preclude certification of a class action seeking money damages because individual reliance issues would overwhelm questions common to the class." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 462–63 (2013).

Basic relieved class action plaintiffs of having to prove direct reliance on a false statement. A plaintiff may invoke the *Basic* presumption to claim reliance on the "integrity of the price set by the market," which was allegedly distorted by the false statement. *Basic*, 485 U.S. at 245. This type of "fraud-on-the-market" theory applies on a class-wide basis and avoids individualized questions of reliance that would normally defeat class certification. Indeed, the Court created the *Basic* presumption to facilitate securities fraud class actions. *See Basic*, 485 U.S. at 245–46; *Amgen*, 568 U.S. at 462–63; *Halliburton II*, 573 U.S. at 267–68; *Goldman*, 594 U.S. at 118–19. The *Basic* presumption did not arise from any statutory mandate or regulatory rule.

While *Basic* created a viable path for securities fraud class actions, the powerful presumption is prone to abuse. This Court has had to revisit *Basic* many times to reaffirm that a defendant can still defeat class certification by "sever[ing] the link" between an alleged misstatement and any purported distortion to the market price of the stock. *See Goldman*, 594 U.S. at 118; *Halliburton II*, 573 U.S. at 269; *Amgen,* 568 U.S. at 481–82; *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 812–13 (2011). This case presents an important opportunity to further clarify the proper application of the *Basic* presumption.

B. The *Basic* presumption should only apply if a stock trades in an "efficient market" and a fraudulent statement impacts the stock price.

For the *Basic* presumption to make sense, the alleged misrepresentation must have an impact on the company's stock price. Otherwise, a plaintiff cannot have been deceived by the market price. Indeed, if the alleged misstatement "had no price impact, then *Basic*'s fundamental premise 'completely collapses, rendering class certification inappropriate.'" *Goldman*, 594 U.S. at 119 (citation omitted).

So to invoke the *Basic* presumption, a plaintiff must show, as an "indirect proxy for price impact," that the misrepresentation was "publicly known" and "material" and that the "stock traded in an efficient market" that would have quickly reacted to the alleged misstatement. *Halliburton II*, 573 U.S. at 268. The "efficient market" requirement is critical because only in an "efficient market" will a stock price "reflect all of the company's public statements, including misrepresentations." *Goldman*, 594 U.S. at 113. If a market is not efficient, an alleged misstatement cannot be assumed to have distorted the market price.

In a conventional securities fraud suit, a false statement is alleged to have "cause[d] a stock's price to rise" and then "the price [falls] when the truth comes to light." *Schleicher v. Wendt*, 618 F.3d 679, 683 (7th Cir. 2010). But since *Halliburton II*, plaintiffs increasingly have turned to the "inflation maintenance" price-impact theory to establish class certification. Under this theory, the plaintiff does not

assert that a misstatement caused an artificial rise in the stock price. Rather, the plaintiff alleges that the false statement *prevented* a stock price from falling, and the price drop after correction of the alleged misstatement by a "corrective disclosure" therefore reflects "inflation maintained by the earlier misrepresentation." *Goldman*, 594 U.S. at 123. The use of the inflation-maintenance theory makes class certification much less susceptible to successful price-impact objections. *See* Note, *Congress, the Supreme Court, and the Rise of Securities-Fraud Class Actions*, 132 HARV. L. REV. 1067, 1073 (2019).

In *Goldman*, the Court expressly declined to address the validity of inflation-maintenance theories. 594 U.S. at 120 n.1. But even assuming inflation maintenance is a valid price-impact theory, "a sharp drop in share price alone is not enough for a class to be certified." *In re Allstate Corp. Sec. Litig.*, 966 F.3d 595, 605, 612 (7th Cir. 2020) ("[P]rice *reaction* (the simple movement of the price in response to a given statement) is quite different from the legal concept of price *impact*."). After all, a stock drop exists in every securities fraud class action, so a stock drop does nothing to distinguish cases in which a misrepresentation impacted the stock price from those where it did not. As Judge Chung recognized in her cogent dissent below, "even where a price drop is associated with a disclosure, the disclosure must still be new and corrective to create an inference of a misrepresentation's price impact." Pet. App. 9a. The "finding of an associated price drop" by itself "does not address whether newly publicly known information in the disclosure related to and corrected a prior misrepresentation." *Id.* at 10a.

C. In an "efficient market," only new information can impact the stock price.

As a corollary of the "fraud-on-the-market" theory, if a plaintiff relies on a "corrective disclosure" as the source of price impact, it is imperative that the corrective disclosure conveys new information. That is because "disclosure of confirmatory information or information already known by the market—will not cause a change in the stock price" in an efficient market. *FindWhat Inv'r Grp. v. FindWhat.com*, 658 F.3d 1282, 1310 (11th Cir. 2011); *see also Greenberg v. Crossroads Sys., Inc.,* 364 F.3d 657, 665–66 (5th Cir. 2004) ("[C]onfirmatory information has already been digested by the market and will not cause a change in stock price.").

Thus, if a defendant shows that a corrective disclosure does not reveal new information that the market has not yet absorbed, then it naturally follows that the defendant has "sever[ed] the link" between the alleged misstatement and the price drop because the plaintiff's theory can no longer be squared with the premise of an efficient market. *Goldman*, 594 U.S. at 118; *see also, e.g.*, *In re FibroGen Sec. Litig.*, 2024 WL 1064665, at *12 (N.D. Cal. Mar. 11, 2024) ("[F]inding of 'back-end' price impact requires proof that the information disclosed . . . was . . . new (unknown to the market prior to July 15).").

D. The Third Circuit erroneously held that information need not be new to impact the stock price.

Below, Johnson & Johnson established that Plaintiffs' so-called corrective disclosures lacked any new, corrective information. *See* Pet. App. 3a. The corrective disclosures, cherry-picked by Plaintiffs to coincide with stock drops, consisted of a news article summarizing publicly available information, a trial verdict reflecting a jury's opinion on the meaning of publicly available evidence, and a self-serving press release reflecting a law firm's belief that publicly available documents supported the filing of product liability lawsuits. Virtually all the contents of these disclosures were long disclosed and widely known and, in any event, revealed no falsity in the company's earlier statements. *See* Pet. at 12–13.

Even so, the Third Circuit erroneously held that the disclosure of this already public information known by the market (and thus information presumed to be reflected in the stock price) could still cause a price impact. The majority reasoned that it "need not decide whether J&J's assertion that a disclosure must be new is correct" because "disclosures based on public information may nevertheless communicate a *new signal* to the market in certain situations." Pet. App. 3a (emphasis added). Then, the majority found that the alleged corrective disclosures at issue sent "new signals" to the market that impacted the stock price, even if they did not reveal new information. *Id.* at 4. The majority did not consider what the market already knew.

In reaching this decision, the Third Circuit failed to appreciate or recognize that in an "efficient market," the absorption of information does not depend on how information is disseminated (intensity, method, mode, etc.), so long as the relevant facts become known to the market. A purported "new signal" to the market based on previously disclosed facts, no matter how that signal is conveyed, cannot establish that an alleged misstatement caused a distortion of the stock price. That is true even if the "new signal" leads to a stock price reaction. In sum, the "new signal" exception adopted by the Third Circuit cannot be reconciled with "efficient market" principles, has no basis in this Court's precedents, and fails to recognize that negative publicity or simple distress from the republication of stale, but unflattering, information can generate a market reaction separate and apart from any purported correction of a misstatement.

Indeed, courts have recognized that a stock drop after a *confirmatory* disclosure is more logically attributed to investor fear following negative news rather than a correction of the alleged misstatement itself. For instance, the Fourth Circuit in *Tchrs.' Ret. Sys. of La. v. Hunter* held that the stock price drop following a lawsuit based on publicly available information "more logically occurred," not due to the market reacting to the correction of the alleged misstatement, but "because the market feared that a lawsuit launched by a founder and former CEO of the corporation portended a period of instability and discord that could disrupt the corporation's operations." 477 F.3d 162, 187–88 (4th Cir. 2007). *See also Meyer v. Greene*, 710 F.3d 1189, 1200 (11th Cir.

2013) (stock decline logically attributed to "'changed investor expectations' after an investor who wielded great clout in the industry voiced a negative opinion about the company"); *In re Arcimoto Inc., Sec. Litig.*, 2022 WL 17851834, at *6 (E.D.N.Y. Dec. 22, 2022) ("[I]diosyncratic" market reactions to "publications that merely characterize information already circulating in a negative way cannot prove loss causation."); *In re Omnicom Grp., Inc. Sec. Litig.*, 541 F. Supp. 2d 546, 554 (S.D.N.Y. 2008) (plaintiff's loss causation theory failed to acknowledge "potential effect from WSJ Article's highly negative tone"), *aff'd*, 597 F.3d 501 (2d Cir. 2010).

II. The Court should grant the Petition to resolve a circuit split regarding application of the *Basic* presumption.

The decision below widens a preexisting gap among the circuits on the type of information that qualifies as "new" and thus capable of moving a stock price in an efficient market when a plaintiff invokes the *Basic* presumption.

In one camp, several circuit courts, including the First, Second, Fourth, and Eleventh Circuits, have concluded that an efficient market does not react to facts that were already publicly disseminated, even if republished by a new source in a different light or form. *See, e.g.*, *Bricklayers & Trowel Trades Int'l Pension Fund v. Credit Suisse Sec. (USA) LLC*, 752 F.3d 82, 95 (1st Cir. 2014) ("[W]hile the disclosures made on the event dates did not merely parrot previously released information, they did no more than to provide gloss on public information, and thus permitted the district court to find that they would

not have moved AOL's share price in an efficient market."); *Omnicom*, 597 F.3d at 512 ("What appellant has shown is a negative characterization of already public information."); *Meyer,* 710 F.3d at 1198 ("[T]he fact that the sources used in the Einhorn Presentation were already public is fatal."); *Hunter*, 477 F.3d at 187–88 ("The problem with plaintiffs' theory on the C & C transactions is that these facts had already been disclosed in public filings, so their revelation in Hunter's 2003 complaint could not have caused Cree's stock price to decline.").

Meanwhile, the Third Circuit has now joined the Ninth Circuit in holding that "[a] disclosure based on public information can, in certain circumstances, constitute a corrective disclosure" that moves the stock price. *In re BofI Holding, Inc. Sec. Litig.*, 977 F.3d 781, 795 (9th Cir. 2020). Most recently, the Ninth Circuit held that republication of previously disclosed information can still cause a stock price movement that supports the invocation of the *Basic* presumption, so long as that information was not "widely discussed." *Jaeger v. Zillow Grp., Inc.*, 2025 WL 2741642, at *2 (9th Cir. Sept. 26, 2025). In similar fashion, the Third Circuit held below that republication of old news can still cause a stock drop if it "communicate[d] a new signal to the market." Pet. App. 8a. For that reason, the Third Circuit said that it "need not decide whether J&J's assertion that a disclosure must be new is correct." *Id.* These decisions from the Third and Ninth Circuits are at odds with this Court's repeated admonition that "the market price of shares traded on well-developed markets reflects all publicly available information." *Halliburton II*, 573 U.S. at 268, 270.

III. The Court should grant the Petition because the decision below will inject confusion that bleeds into related loss causation and class period determinations.

The Third Circuit's decision has the potential to bleed into and water down other elements of securities fraud claims. For instance, it could very well destabilize well-established law on loss causation. "Loss causation"—"*i.e.*, that the misrepresentation caused the stock price drop"—is an element of a securities fraud claim that every plaintiff must adequately plead and prove. *Merck*, 432 F.3d at 274. In "fraud-on-the-market" cases, a plaintiff typically shows loss causation through allegations that the "share price fell significantly after the truth became known," *i.e.*, after a corrective disclosure. *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 342, 347 (2005). While loss causation and price impact are distinct concepts, they "overlap" significantly. *In re Allstate Corp.*, 966 F.3d at 608.

A plaintiff cannot establish that a corrective disclosure caused a stock drop unless the corrective disclosure revealed new information that the market had never known. *See, e.g.*, *Merck*, 432 F.3d at 270–71 (publication of publicly available information did not constitute corrective disclosure); *Hunter*, 477 F.3d at 187–88 (negative characterization of previously known information did not constitute corrective disclosure); *Meyer*, 710 F.3d at 1198 ("[A] corrective disclosure 'obviously must disclose *new* information.'") (citation omitted). Moreover, to the extent that plaintiffs plead the existence of an efficient market (as the plaintiffs did here), they

"cannot contend that the market is efficient for purposes of reliance and then cast the theory aside when it no longer suits their needs for purposes of loss causation." *Meyer*, 710 F.3d at 1198–99.

The Third Circuit's decision below also could improperly lengthen class periods and result in unwarranted expansion of class size and associated liability. When initially filed, securities fraud class action complaints typically are sourced exclusively from publicly available materials and filed after the final alleged corrective disclosure identified in the complaint. Logically, a lawsuit alleging that a prior statement was false is a clear indicator that the market has learned of the statement's falsity. Yet under the Third Circuit's reasoning, there is no logical end to the class period in these types of cases.

A plaintiff could characterize any subsequent news story or event touching on the subject matter of an alleged misstatement as a "new signal" that led to a stock price decline and assert that it extends the class period. Indeed, that is effectively what the Third Circuit held in concluding that (1) a Reuter's article published in December 2018 (10 months after the filing of the first securities fraud class action complaint),[2] and (2) a "client-solicitation press release" from a small, product-liability plaintiffs' firm inviting "the filing of additional [product liability] suits," each caused a price impact attributable to the

[2] The first securities fraud class action complaint was filed on February 8, 2018. *See Hall v. Johnson & Johnson et al.*, Case No. 3:18-cv-01833 (D.N.J. Feb. 8, 2018), ECF No. 1.

market purportedly learning of the falsity of the alleged misstatements. Pet. App. 4 n.11.

But it would make no sense to allow a class period to extend beyond the date a lawsuit is filed, which itself establishes that the market purportedly learned the truth of the alleged misstatement from a corrective disclosure at an earlier date. *See Alich v. Opendoor Techs. Inc.*, 2024 WL 839146, at *15 (D. Ariz. Feb. 28, 2024) ("If investors were ready to bring a securities fraud action in October 2022, Opendoor cannot have corrected any misimpressions about the algorithm's unfailing capabilities in November 2022."), *vacated in part on other grounds*, 2024 WL 2153529 (D. Ariz. May 14, 2024). If left unaddressed, however, the Third Circuit's decision would allow plaintiffs to improperly extend class periods in this manner, increasing the potential damages (and settlement leverage) associated with any given case.

IV. The Court should grant the Petition to mitigate the deleterious public policy consequences of the decision below.

While *Basic* allows a plaintiff to bring a securities fraud claim on behalf of a class, Justice White's concurrence proved prescient when he expressed "fear that the Court's decision may have many adverse, unintended effects as it is applied and interpreted in the years to come." *Basic*, 485 U.S. at 251 (White, J. concurring). Both Congress and the Court have since recognized that securities fraud class actions are uniquely prone to abuse. *See Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 313 (2007) ("As a check against abusive litigation by private parties, Congress enacted the Private

Securities Litigation Reform Act of 1995."). And the Court's prior decisions revisiting *Basic* have erected important guardrails to discourage meritless lawsuits brought for "*in terrorem*" settlement value. *Halliburton II*, 573 U.S. at 296 n.7 (Thomas, J., concurring).

The Third Circuit's decision tears down those guardrails, making it far too easy for plaintiffs to satisfy *Basic*'s price-impact requirement, especially in inflation-maintenance cases. Inflation-maintenance theories have become increasingly popular among the plaintiffs' bar because an inflation-maintenance theory is "almost always fatal" to a defendant's attempt to defeat class certification. Mark Gideon, *Event-Driven Securities Litigation*, 24 U. PA. J. BUS. L. 522, 569 (2022). Post-*Halliburton II*, securities fraud plaintiffs started to invoke an inflation-maintenance theory "in 60-70% of Rule 10b-5 class action complaints," making it "nearly impossible for defendants to successfully rebut the *Basic* presumption, regardless of the merits (or lack thereof) of a plaintiff's case." *Congress, the Supreme Court, and the Rise of Securities-Fraud Class Actions*, *supra*, at 1073.

As a result, "event-driven" securities lawsuits — cases based on statements purportedly revealed false by later events that cause a back-end price drop, such as data breaches, environmental disasters, or enforcement actions—have displaced traditional securities fraud claims based on corporate financial disclosures that cause a front-end price increase. Samuel Groner et al., *Event-Driven, AI Cases Dominate 2026 Securities Litigation Field*, BLOOMBERG L. (Jan. 5, 2026), https://bit.ly/4bBshIa

("Looking ahead to 2026, we expect . . . that event-driven litigation—i.e., litigation that is the result of a disruptive event that causes a company's share price to decline—will continue to be the predominant form of private securities litigation.").

These event-driven securities cases, which rely on inflation-maintenance theories, are notorious for exerting undue settlement pressure, "mean[ing] that the risk of vexatious litigation is high." Amanda M. Rose, *A Response to Calls for SEC-Mandated ESG Disclosure*, 98 WASH. U. L. REV. 1821, 1852–53 (2021); *see also* Emily Strauss, *Is Everything Securities Fraud?*, 12 U.C. IRVINE L. REV. 1331, 1351 (2022) ("[T]he pressure to settle even claims with a low probability of success is compounded in event-driven cases" in part because "the application of 10b-5 jurisprudence in event-driven securities cases has been inconsistent, leading to great uncertainty for defendants.").

The expansion of inflation-maintenance theories carries with it another problem—inflation-maintenance cases "can easily lead to compensation far more than mispricing at the time of a trade." Richard A. Booth, *Price Inflation and Price Maintenance in Securities Fraud Class Actions*, 30 STAN. J.L. ECON. & BUS. 133, 138 (2025). That is because a "corrective disclosure often will be accompanied by other facts that cause market price to fall more . . . than it would have fallen" if the company had not made the allegedly false or misleading statement. *Id.* at 140. That possibility is particularly acute "where the corrective disclosure comes from an event," such as an oil spill, cyber breach, or, as here, a large jury verdict. *Id.* at 141. Even if the event might

be related to the alleged fraud, these events no doubt have an impact on a company's stock price independent from any purported inflation maintained by a prior false statement. Recent scholarship has focused on the problem "of exorbitant claims" that rely on inflation-maintenance theories. *Id.* at 148.

The Third Circuit's "new signal" formulation makes defeating an inflation-maintenance theory an even more difficult task and leaves no stock price drop off limits to the filing of a securities fraud claim. Creative plaintiffs' counsel will start with a stock price drop and work their way backwards. They will base securities fraud claims on prior statements in some way related to an event or news that led to the stock price drop. Even if those statements had no impact on the stock price, under an inflation-maintenance theory, a back-end stock drop can always serve as a proxy for alleged front-end inflation. And with the decision below in hand, plaintiffs' counsel inevitably will argue whatever the bad news was that led to the stock drop, it sent a "new signal" to the market, even if the news did not reveal anything new about the alleged fraud.

This development particularly will impact the rising number of securities fraud class actions that are being filed in the Third Circuit. Historically, the Third Circuit has seen the third-most securities class actions—more than the next two circuits combined. *Securities Class Action Clearinghouse: Heat Maps & Related Filings*, STAN. L. SCH., https://perma.cc/NHD6-JAAW (last visited Mar. 12, 2026). And the Third Circuit is catching up with the Second and Ninth Circuits, which collectively saw their filings decline nearly 34% in 2025 compared to 2024, while

filings in the Third Circuit increased more than 50% in 2025. Edward Flores et al., *Recent Trends in Securities Class Action Litigation: 2025 Full-Year Review* 5 (2026), https://bit.ly/46Ugnqa.

The Third Circuit is particularly important for securities litigation because "over half of all U.S. public traded companies" call Delaware their legal home. *Business*, DEL. DEP'T OF STATE, https://bit.ly/3NysCCf (last visited Mar. 12, 2026).

CONCLUSION

The Court's intervention in this case will resolve the ongoing circuit split, eliminate confusion that could bleed into related securities fraud determinations, and mitigate abuse of the *Basic* presumption in securities fraud class actions, particularly in "inflation maintenance" cases. The Court should grant the Petition to clarify that the "new signal" standard cannot support the existence of the necessary price impact required for class certification under the *Basic* presumption.

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

WILLIAM D. MARSH
ALLEN OVERY SHEARMAN STERLING US LLP
2601 Olive Street
17th Floor
Dallas, TX 75201

LYLE ROBERTS
Counsel of Record
CASEY M. DETERMAN
ALLEN OVERY SHEARMAN STERLING US LLP
1101 New York Ave., NW
Washington, DC 20005
(202) 508-8108
lyle.roberts@aoshearman.com

Counsel for Amicus Curiae

March 20, 2026