No. 25A-

IN THE

Supreme Court of the United States

JOHNSON & JOHNSON, ET AL.,

Applicants-Petitioners,

v.

SAN DIEGO COUNTY EMPLOYEES RETIREMENT ASSOCIATION; FRANK HALL, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Respondents.

APPLICATION DIRECTED TO THE HONORABLE SAMUEL A. ALITO FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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APPLICATION FOR EXTENSION OF TIME

Under this Court's Rule 13.5, Applicants Johnson & Johnson, Alex Gorsky, Joan Casalvieri, Tara Glasgow, and Carol Goodrich respectfully request a 30-day extension of time within which to file a petition for a writ of certiorari, up to and including February 4, 2026.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The judgment for which review is sought is *San Diego County Employees Retirement Association* v. *Johnson & Johnson*, No. 24-1409, 2025 WL 2176586 (3d Cir. July 30, 2025), attached as Exhibit 1.

JURISDICTION

This Court will have jurisdiction over any timely petition under 28 U.S.C. § 1254(1). The Third Circuit issued its judgment on July 30, 2025, and denied a timely petition for rehearing on October 7, 2025 (Exhibit 2). Thus, under Rule 13.1, a petition to this Court is currently due by January 5, 2026. In accordance with Rule 13.5, this application is being filed at least 10 days before that date.

REASONS JUSTIFYING AN EXTENSION OF TIME

1. This case warrants the Court's review because it presents an ideal vehicle for the Court to resolve two related splits of authority about the proper application of the *Basic* presumption in modern securities litigation—questions that have become both increasingly common and increasingly unsettled.

2. For more than three decades, *Basic Inc.* v. *Levinson*, 485 U.S. 224 (1988), has permitted securities-fraud plaintiffs to presume classwide reliance based on the

theory that, in an efficient market, all public information—including any alleged misrepresentation—is incorporated into the stock price. In inflation-maintenance cases, plaintiffs invoke that presumption even where the alleged misstatements did not cause any price increase; instead, they argue that the misstatements merely *maintained* an inflated price that later fell when an alleged "corrective disclosure" revealed the supposed truth. As this Court recognized in *Goldman Sachs Group Inc.* v. *Arkansas Teacher Retirement System*, 594 U.S. 113 (2021), the logic of the inflation-maintenance theory depends entirely on whether the back-end disclosure in fact "actually corrected" the front-end misstatement. Without that "[]match," there is no reason to infer from a later stock drop that the earlier misstatements had price impact. *Id.* at 123.

3. Here, the Third Circuit affirmed class certification without requiring plaintiffs to show that any alleged corrective disclosure either actually corrected any of J&J's prior statements or disclosed new information to the market. The alleged "corrective disclosures"—plaintiffs' lawyer advertising, media coverage of public trials and recycled allegations, and an outlier jury verdict—did not reveal any facts that were not already public. Nor did they falsify J&J's prior public statements regarding the safety of its talc products. A divided panel nonetheless sustained the district court's class-certification order on the theory that the alleged corrective disclosures matched the "subject" of J&J's alleged misstatements and contained information that—though not actually *new*—may have "communicate[d] a new *signal* to the market" because of its source. *San Diego Cnty. Emps. Ret. Ass'n* v. *Johnson &*

Johnson, No. 24-1409, 2025 WL 2176586, at *3, *4 (CA3 July 30, 2025) (emphasis added). Judge Chung dissented, explaining that *Goldman* requires explicit findings that an alleged corrective disclosure both *discloses* new information and *corrects* a prior misstatement. Judge Bibas and Judge Krause joined Judge Chung in calling for en banc rehearing.

4. The Third Circuit's approach deepens a growing split with the Second Circuit, which—on remand from *Goldman*—held that "it was clear error for the district court to rely on [a] subject-matter match" to grant certification. See *Ark. Tchr. Ret. Sys.* v. *Goldman Sachs Grp., Inc.*, 77 F.4th 74, 80, 104–05 (CA2 2023). As the Second Circuit recognized, *Goldman* requires a court to conduct a "searching review" of the "contents" of the alleged misstatement and the alleged corrective disclosure to ensure a match. *Id.* It is not enough that a later event shares a general subject matter with an alleged misstatement; the disclosure must actually reveal the falsity of what was previously said. Otherwise, there is a "mismatch," and no basis to infer price impact. *See id.* at 100–01. By contrast, the Third Circuit, joined by the Ninth Circuit, now permits class certification whenever the back-end event and front-end statement concern similar subject matter. These circuits have replaced *Goldman*'s content-match requirement with a loose review of subject-matter overlap. See, *e.g.*, 2025 WL 2176586, at *4 (holding that "there is no mismatch between the subject of the alleged misrepresentation and the content of the disclosures" because each disclosure "contained information *relating to* J&J's alleged misrepresentations" (emphasis added)); *Jaeger* v. *Zillow Grp, Inc.*, No. 24-6605, 2025 WL 2741642, at *2 (CA9 Sept.

26, 2025) ("Zillow's front-end and back-end statements are matched enough under *Goldman*"). Absent this Court's review, this fundamental disagreement over what is required for an alleged corrective disclosure to be "actually correct[ive]" will inevitably produce divergent case outcomes across circuits and undermine *Goldman*'s safeguards.

5. Review is also necessary because the Third and Ninth Circuits have rejected the requirement that a corrective disclosure must reveal *new* information. Nearly every other court of appeals, addressing this question in the parallel loss-causation context, holds that the re-publication of previously disclosed information cannot constitute a corrective disclosure because the efficient market will already have incorporated that information into the price. See, *e.g., In re Omnicom Grp, Inc. Sec. Litig.*, 597 F.3d 501, 511–13 (CA2 2010); *Katyle* v. *Penn Nat'l. Gaming, Inc.*, 637 F.3d 462, 473 n.6, (CA4 2011); *MacPhee* v. *MiMedx Grp., Inc.*, 73 F.4th 1220, 1243 (CA11 2023); *Emps.' Ret. Sys.* v. *Whole Foods Mkt., Inc.*, 905 F.3d 892, 904 (CA5 2018); *Rand-Heart of N. Y., Inc.* v. *Dolan*, 812 F.3d 1172, 1180 (CA8 2016); *Meyer* v. *Greene*, 710 F.3d 1189, 1199 (CA11 2013). That view follows directly from *Basic*'s premise that markets rapidly incorporate all public information. See *Basic*, 485 U.S. at 246–47. The decision below, however—along with the Ninth Circuit—has embraced a "new signals" theory under which previously disclosed information, re-published by a different source, can be treated as a corrective disclosure. This conflicts with the approach taken by the other circuits, which have made clear that plaintiffs who rely on *Basic* must "take the bitter with the sweet," and cannot invoke market efficiency

to presume reliance while discarding it when it no longer favors them on price impact. *Meyer*, 710 F.3d at 1199.

6. On both issues, the panel decision conflicts with this Court's precedent. On correctiveness, the panel's subject-matter test is irreconcilable with *Goldman*, which found a potential "mismatch" between general alleged misstatements and specific corrective disclosures, even though both the misstatements and disclosures concerned the same general subject (*i.e.*, Goldman's conflicts). The Third Circuit's subject-matter test renders *Goldman*'s correctiveness analysis superfluous and unnecessary, and guts that important safeguard for defendants to rebut the presumption of reliance. On newness, the panel's approach cannot be reconciled with *Basic*, and subsequent decisions like *Halliburton Co.* v. *Erica P. John Fund, Inc.* (*Halliburton II*), which make clear that speculation about the degree and extent to which public information is incorporated into a stock's price "fail[s] to take *Basic* on its own terms." 573 U.S. 258, 271 (2014). Under this Court's *Basic* precedent, if the re-publication of previously disclosed information created a "new signal" to the market, then *Basic* should not have applied at all. Yet the Third Circuit's approach preserves *Basic* for plaintiffs and then creates an illogical carve-out from *Basic* that handicaps defendants.

7. The legal issues presented in this case are also exceptionally important. They arise against the backdrop of event-driven inflation-maintenance litigation, which has become the predominant approach for securities-fraud plaintiffs. Plaintiffs frequently target generic corporate statements about safety, integrity, or compliance,

and recast adverse publicity, verdicts, or regulatory scrutiny as "corrective disclosures"—even when those events add nothing new to the public record. Such cases now implicate many billions of dollars in damages every year. And because inflation-maintenance cases allow plaintiffs to reverse-engineer purported "corrections" from any significant stock drop, the need for clear, uniform standards is critical to ensuring that the *Basic* presumption does not become a tool for generating liability unmoored from genuine disclosures of fraud.

8. Finally, this case is an ideal vehicle for review. The issues were preserved and thoroughly litigated in both courts below, were outcome-determinative, and arise in a posture that cleanly presents the pure legal questions without factual complications. The Third Circuit divided sharply on these questions, with a dissent at the panel stage and multiple judges calling for en banc review. And because inflation-maintenance cases almost always settle once a class is certified, opportunities for this Court to address these recurring issues are rare. Granting review here would allow the Court to clarify the governing standards, restore uniformity among the circuits, and reaffirm the safeguards that *Goldman* and this Court's other *Basic* precedents require.

9. There is good cause for a 30-day extension. The current January 5, 2026 deadline falls immediately after the holiday season, during which time counsel for Applicants have significant personal and familial obligations. In addition, since the Third Circuit's decision came down, counsel has also been addressing, and must continue to address, numerous deadlines, including briefing in several cases in

various federal courts. These deadlines have made and will continue to make it difficult to seek this Court's review by January, 2026.

10. Counsel's most proximate competing deadlines and hearing dates include and have included:

- December 10, 2025: motion to intervene in support of federal defendants filed in *American Hospital Association* v. *Kennedy*, Case No. 2:25-cv-00600-LEW (D. Maine);
- December 15, 2025: response in opposition to plaintiffs' motion for Temporary Restraining Order filed in *American Hospital Association* v. *Kennedy*, Case No. 2:25-cv-00600-LEW (D. Maine);
- December 17, 2025: reply in support of motion to intervene in support of federal defendants filed in *American Hospital Association* v. *Kennedy*, Case No. 2:25-cv-00600-LEW (D. Maine);
- December 19, 2025: hearing on plaintiffs' motion for Temporary Restraining Order scheduled in *American Hospital Association* v. *Kennedy*, Case No. 2:25-cv-00600-LEW (D. Maine);
- December 26, 2025: amicus brief due for Electronic Payments Coalition in support of Defendants-Appellants in *Corner Post, Inc.* v. *Board of Governors*, No. 25-3000 (CA8).

11. Given this press of existing business, an extension is necessary to ensure that counsel has adequate time to craft a petition that will best assist this Court in determining whether to grant review.

12. Applicants met and conferred with opposing counsel, who represented that they do not oppose the requested relief.

CONCLUSION

For these reasons, Applicants respectfully request an extension of 30 days, up to and including February 4, 2026, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,

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