

IN THE
Supreme Court of the United States

SAFRON CAPITAL CORPORATION, *et al.*,

Petitioners,

v.

ELANCO ANIMAL HEALTH INC., *et al.*,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF INDIANA**

REPLY BRIEF FOR PETITIONERS

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The Petition presents a single, recurring, and unsettled question of federal law: “[w]hen, if ever,” may a court hold that materiality in a federal securities action is established—or defeated—“as a matter of law without findings of fact by the trier of fact?” Materiality under this Court’s reasonable-investor standard is “a mixed question of law and fact,” and its resolution “requires delicate assessments of the inferences a ‘reasonable shareholder’ would draw from a given set of facts and the significance of those inferences to him, and these assessments are peculiarly ones for the trier of fact.” *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 450 (1976). A court may take that question from the factfinder “[o]nly if the established omissions are ‘so obviously important to an investor, that reasonable minds cannot differ on the question of materiality[.]’” *Id.* But this Court announced that exception on summary judgment. It has never explained how—or whether—a court may invoke it at the pleading stage, before any record exists and where the presence of competing inferences would ordinarily foreclose resolution as a matter of law. That unanswered question is important, recurring, and squarely presented here.

The Court’s silence has left the lower courts without a settled method, and they have filled the gap inconsistently. Reciting a common vocabulary, some treat contestable inferences as a bar to dismissal; others weigh the “total mix” of information themselves and dismiss on the pleadings. Whether or not those formulations are verbally interchangeable, they are not applied through a common method—and the resulting unpredictability is itself a compelling reason for review.

This case cleanly presents the question. The Indiana courts resolved materiality against Petitioners on the pleadings—applying a federal standard borrowed from the Seventh Circuit without the benefit of any discovery. Yet on a developed factual investigative record, the Securities and Exchange Commission found Elanco’s closely related pre-offering statements “materially misleading.” That a court weighing the bare pleadings and an agency weighing a developed factual investigative record reached opposite conclusions about the same underlying conduct underscores why a settled method matters. The Petition should be granted.

A. The Standard Governing When Materiality May Be Resolved as a Matter of Law Is Unsettled

1. This Court Fixed a Narrow Exception on Summary Judgment but Never a Method for Invoking it on the Pleadings

In *TSC*, this Court held that the standard for determining materiality on a Rule 14a-9 omissions claim was whether there was “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.” 426 U.S. at 449. The Court stated that this determination was “a mixed question of law and fact,” that “the underlying objective facts, which will often be free from dispute, are merely the starting point[,]” and that “[t]he determination requires delicate assessments of the inferences a ‘reasonable shareholder’ would draw from a given set of facts and the significance of those inferences to him, and these assessments are peculiarly ones for the trier of fact.”

426 U.S. at 450; *see also* 17 CFR § 240.14a-9. The Court analogized the inquiry to negligence, where the trier of fact’s competence with the reasonable-person standard “ordinarily” forecloses summary judgment. 426 U.S. at 450 n.12.

In *Basic Inc. v. Levinson*, 485 U.S. 224 (1988), the Court adopted this *TSC* standard for determining materiality in Section 10(b) and Rule 10b-5 cases. 485 U.S. at 231-32; *see also* 15 U.S.C. § 78j(b); 17 CFR § 240.10b-5. The Court reaffirmed that adoption in *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27 (2011). Then, without any specific guidance on its application, the Court carried this *TSC* standard into the Securities Act context in *Omnicare, Inc. v. Laborers Dist. Council Const. Indus. Pension Fund*, 575 U.S. 175, 196 (2015). But this Court has never held that a court may resolve materiality *against* a plaintiff on the pleadings, nor explained by what method a court decides, before any record exists, that “reasonable minds cannot differ.” That is the gap.

TSC drew a narrow line for establishing materiality as a matter of law. “Only if the established omissions are ‘so obviously important to an investor, that reasonable minds cannot differ on the question of materiality’” may “materiality [be] appropriately resolved ‘as a matter of law’ by summary judgment.” 426 U.S. at 450. The Court in *TSC* did not then—and has not since—prescribed a test for determining when “reasonable minds cannot differ.” *Id.* This Court has never established a method for resolving against a plaintiff on the pleadings—without a factual record and without the inference-drawing this Court has reserved for the trier of fact.

If the exception may be invoked despite the presence of competing factual inferences (the basis for reversal in *TSC*), lower courts are free to make for themselves the “delicate assessments” of the inferences a “reasonable shareholder” would draw from the “total mix” of information—the very assessments *TSC* reserved to the trier of fact for determining the “substantial likelihood” that a “reasonable shareholder” would deem a statement or omission “important.” 426 U.S. at 450. So construed, the exception would swallow the general rule that materiality in securities cases is a “mixed question of law and fact” for the trier of fact.

2. Lacking a Settled Method, the Lower Courts Divide Over Whether Competing Inferences Bar Dismissal

The absence of a settled method is the core problem, and it persists whether or not the circuits’ formulations are verbally interchangeable. Respondents catalog the circuits’ overlapping phrasings—“so obviously unimportant,” “could not have been swayed,” “substantial likelihood”—and conclude there is “no substantive difference.” Opp. 14-16. But shared vocabulary drawn from a common source does not yield a common method. The dispositive divide is analytical: some courts ask whether competing inferences exist and, finding them, decline to resolve materiality on the pleadings; others weigh the “total mix” themselves and dismiss. *Compare Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 162 (2d Cir. 2000), *with Smykla v. Molinaroli*, 85 F.4th 1228, 1236, 1239 (7th Cir. 2023).

On one side, courts treat genuine competing inferences as a bar to pleading-stage resolution. In *Ganino*, the Second Circuit reversed a dismissal, holding it “inappropriate to determine at [the pleading] stage” that misstatements regarding net income “were immaterial as a matter of law” because “it cannot be said that no reasonable investor would have considered them significant.” *Ganino*, 228 F.3d at 166. The Ninth Circuit recently vacated a Securities Act dismissal on the same premise, holding that the duty to disclose “coalesces” with the total-mix inquiry, to be assessed on remand. *Sodha v. Golubowski*, 154 F.4th 1019, 1034-36 (9th Cir. 2025). Other courts articulate the same inference-protective caution even where the particular complaint ultimately fails: a “puffery” label “doesn’t absolve the reviewing court of the duty to consider the possibility—however remote—that in context and in light of the ‘total mix’ of available information, a reasonable investor might nonetheless attach importance to the statement[.]” *Carvelli v. Ocwen Fin. Corp.*, 934 F.3d 1307, 1320-21 (11th Cir. 2019), and materiality “will rarely be dispositive in a motion to dismiss.” *In re ProShares Tr. Sec. Litig.*, 728 F.3d 96, 102 (2d Cir. 2013).

On the other side, courts weigh the total mix itself and dismiss. The Seventh Circuit, though it recites that materiality is “normally a question of fact reserved for the trier of fact,” holds that it “can resolve materiality as a matter of law when the information at issue is so obviously unimportant that reasonable minds could not differ,” and then “[i]n view of all the disclosures provided” decides for itself that “plaintiffs have not alleged materially misleading statements.” *Smykla*, 85 F.4th at 1236, 1239; accord *Kuebler v. Vectren Corp.*, 13 F.4th 631, 638-39 (affirming dismissal of omitted projections). The

Eighth Circuit likewise holds that “[w]here a reasonable investor could not have been swayed,” a court may deem that an “alleged misrepresentation [to be] immaterial as a matter of law[.]” *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 546-48 (8th Cir. 1997). The divide is neither merely verbal nor hypothetical. Confronting the same pleading-stage inquiry, the Ninth Circuit in *Sodha* declined to weigh the total mix itself and remanded that assessment for development on a record, 154 F.4th at 1036, while the Seventh Circuit in *Smykla* weighed the total mix on the face of the pleadings and directed dismissal, 85 F.4th at 1239. Two courts thus applied the same words to the same question and reached opposite dispositions through opposite methods.

While *Kuebler* stated that it “do[es] not disagree” with *Ganino* or *Carvelli*, and that it does not read “so obviously unimportant” as narrowing *TSC*, 13 F.4th at 639, that disclaimer proves Petitioners’ point. A court can profess fidelity to the shared *TSC* standard and still, for want of any settled method, resolve on the pleadings the very inference-weighting that *Ganino* and *Sodha* hold must await a record. Uniform words applied through opposite methods are not harmony; they are the precise source of the unpredictability—and forum shopping—that warrants this Court’s review.

That divergence produces exactly the instability this Court’s certiorari standards address. Inconsistent results among the lower courts that invite forum shopping are “a substantial reason for granting certiorari.” *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 538 (1992). The concern is acute here: Securities Act claims may be filed in state or federal court alike, so the same registration-statement

claim may be sustained or dismissed depending on the forum. Review is therefore warranted under Supreme Court Rule 10(c), which embraces a state court's decision of "an important question of federal law that has not been, but should be, settled by this Court[.]" Sup. Ct. R. 10(c).

B. The Decision Below Exemplifies the Unsettled Method, and This Court's Recent Statement Confirms Where Securities Materiality Ordinarily Belongs

Having recited the "reasonable minds cannot differ" standard and acknowledged that competing inferences were present, the lower court then weighed those inferences and concluded that a reasonable investor would more likely than not have found the alleged misstatements and omissions immaterial—making the very "delicate assessments" this Court has held are "peculiarly" for the trier of fact. *TSC*, 426 U.S. at 450. Respondents confirm as much: they defend the decision by drawing inferences across eight separate disclosures, the interplay of Securities Act materiality with Regulation S-K, the ex-ante framing of disclosure adequacy, and the treatment of post-offering analyst reaction. Opp. 18-21. Those are merits arguments about which reasonable minds plainly can differ. A court cannot simultaneously hold that reasonable minds could not differ and resolve a contest between inferences about which reasonable minds evidently can. Whether that approach is permissible under *TSC* is the unsettled, outcome-determinative question the Petition presents.

The SEC's parallel proceeding confirms the need for the Court to provide a method for defeating materiality

at the pleading stage that requires the absence of any competing inferences a trier of fact could draw on in assessing materiality. After investigating the same conduct on a developed factual investigative record, the Commission found that Elanco's January 10, 2020 revenue guidance—issued days before the Offering—was “materially misleading” because Elanco had already decided to reduce channel inventory and lower its guidance on account of the very distribution changes alleged to be omitted from the Offering Documents in this action. *In re Elanco Animal Health Inc.*, Release No. 4537, 2024 WL 4752111, at *2, 7-9 (Nov. 12, 2024); *see* Pet. 10-11. Thus, an expert agency, proceeding on a factual investigative record, found that closely related statements about the same undisclosed changes were materially misleading while the court below, confined to the pleadings, held as a matter of law that reasonable minds could not differ. Although the order has no preclusive effect as it was a settled cease-and-desist order, entered on consent without admitting or denying the findings, the order does illustrate how competing inferences that could be case determinative were ignored by the lower court as a result of a gap in the law concerning the method for assessing materiality at the pleading stage as a matter of law.

This Court's own recent statement confirms where materiality in securities actions ordinarily belongs. Distinguishing contract materiality from securities law materiality, the Court observed that “not all questions of materiality are alike: Sometimes materiality is a question of law. . . . Other times, it involves factual determinations uniquely suited for a jury[,]” such as “whether a company's misstatements to the public are material for securities-fraud purposes.” *CITGO Asphalt Refining Co. v. Frescati*

Shipping Co., Ltd., 589 U.S. 348, 357 n.4 (2020), *citing* *TSC*, 426 U.S. at 450. Respondents are correct that the observation is dictum, offered to distinguish an admiralty holding. Opp. 13. But it is a considered and recent characterization by this Court, and it confirms that securities materiality ordinarily falls on the factfinder’s side of the line—leaving unsettled precisely when, and by what method, that allocation yields to resolution as a matter of law.

C. The Federal Question Is Squarely Presented and Reviewable

Respondents’ own account of the lower court’s decision defeats their argument that “[t]he question presented is hopelessly entangled with questions of state law.” Opp. 17-18. By Respondents’ own description, the Indiana Court of Appeals explicitly “applied” a federal standard Respondents attribute to this Court—resolving materiality as a matter of law under *TSC* and the Seventh Circuit case law. Opp. 1-2, 10.

This Court reviews a federal question decided by a state court unless the judgment rests on an adequate and independent state ground. Where “a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion,” this Court takes jurisdiction. *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983). Jurisdiction is “plain” where the asserted state ground is “so interwoven with the federal ground as not to be an independent matter.” *Id.* at 1038, n.4. A state court avoids review only by a “plain statement” that its decision

rests on “bona fide separate, adequate, and independent state grounds[.]” *Id.* at 1032-33.

There is no such plain statement here. Indiana Trial Rule 12(B)(6) supplied only the procedural vehicle; the materiality holding was compelled by federal law, not by anything distinctive to Indiana’s procedural rules. *See* Opp. 18. Respondents’ diversity analogy confirms this point. *Id.* Respondents observe that a federal court sitting in diversity applies the Federal Rules, not state-law judgment standards, when deciding whether a claim may be resolved as a matter of law. *Id.* Similarly, whether a *federal* materiality element may be withdrawn from the factfinder before trial is a question of federal law regardless of the forum or the procedural label attached to it. The state-law overlay changes where the question was decided, not whether it is a federal question this Court may review.

D. The Question Is Important and Recurring, Not a Request for Error Correction

The Petition does not simply seek “error correction.” *See* Opp at 2, 9, 18-21. Petitioners do not contend the court below misapplied a settled rule; they contend that the rule *governing when securities immateriality may be resolved as a matter of law, and the method for applying it*, particularly at the pleading stage, is not settled. That is the paradigmatic basis for certiorari: “an important question of federal law that has not been, but should be, settled by this Court[.]” Sup. Ct. R. 10(c). Rule 10’s separate caution that certiorari is rarely warranted to correct “the misapplication of a properly stated rule of law” is inapposite, because its predicate—a properly stated,

settled rule—is precisely what is absent. Petitioners do not contend the court below misapplied a settled pleading-stage method; they contend this Court has never settled one, and a decision cannot be faulted for misapplying a rule that does not yet exist. The question recurs in every securities action in which a defendant moves to dismiss for immateriality, and a rule permitting courts to resolve materiality as a matter of law on the pleadings operates as a gatekeeper to trial across a vast class of cases.

The question presented is a purely legal one—what method governs resolution of materiality as a matter of law on the pleadings—and its answer does not turn on additional factual development. *Cf. Yee*, 503 U.S. at 538. The absence of a record is not a reason to withhold review; it is the very feature of the pleading-stage posture that makes the method question outcome-determinative and recurring.

E. Respondents’ Forfeiture Argument Misreads the Question Presented

Respondents contend that any challenge to the objective reasonable-investor standard is forfeited because it was not presented below. Opp. 21 n.6. That argument attacks a position Petitioners do not take. Petitioners do not ask this Court to overrule *TSC* or the reasonable-investor standard; they embrace it. The question is the antecedent one the standard leaves open: under what circumstances, and by what method, a court may decide that “reasonable minds cannot differ” as to that standard’s application—particularly where the plaintiff has been denied discovery. *See* 426 U.S. at 450; 15 U.S.C. § 77z-1(b)(1).

That question is fairly included in the one presented. The “statement of any question presented will be deemed to comprise every subsidiary question fairly included therein.” *Yee*, 503 U.S. at 535. And once a federal claim is properly presented, “a party can make any argument in support of that claim” and is “not limited to the precise arguments [it] made below.” *Id.* Petitioners’ arguments thus support the single question on which review is sought—not a new question outside it. Respondents’ reliance on *Yee* is therefore misplaced: unlike the regulatory-takings theory forfeited there, the matter-of-law question—and the method for resolving it—is the core issue the Petition presents.

CONCLUSION

The Petition for writ of certiorari should be granted.

Respectfully submitted,

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