No. 11-1274

In The
# Supreme Court of the United States

MARC J. GABELLI AND BRUCE ALPERT,
*Petitioners,*

*v.*

SECURITIES AND EXCHANGE COMMISSION,
*Respondent.*

**On Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit**

## BRIEF OF THE AMERICAN BANKERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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## INTEREST OF *AMICUS CURIAE*

The American Bankers Association ("ABA") is the principal national trade association of the financial services industry in the United States. Founded in 1875, the ABA is the voice for the nation's $13 trillion banking industry and its million employees. ABA members are located in each of the fifty States and the District of Columbia, and include financial institutions of all sizes and types, both large and small. The ABA, whose members hold a substantial majority of domestic assets of the banking industry of the United States and are leaders in all forms of consumer financial services, often appears as *amicus curiae* in litigation that affects the banking industry. As a result of their function and recordkeeping responsibilities, banks and their subsidiaries are often involved, directly or indirectly, in litigation arising from the Government seeking civil monetary penalties. Accordingly, the ABA has a strong interest in the Court's interpretation of the statute of limitations for such actions, and the statutory provision at issue in this case.[1]

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Letters from Petitioners and Respondent giving blanket consent for the filing of *amicus* briefs are on file with the Court.

## INTRODUCTION AND SUMMARY OF ARGUMENT

This case poses a fundamental question about the interpretation of Congress's rule limiting the time in which government agencies may bring actions seeking civil fines, penalties, or forfeitures.

From the beginning of the Republic, our courts have recognized the vital role that statutes of limitations play in any enlightened system of justice, including our own. *See, e.g.*, *United States v. Kubrick*, 444 U.S. 111, 117 (1979); *Guar. Trust Co. v. United States*, 304 U.S. 126, 136 (1938); *Adams v. Woods*, 6 U.S. (2 Cranch) 336, 342 (1805). Courts repeatedly have recognized that the legislature strikes a balance between plaintiffs' valid right to vindication and defendants' reasonable right to repose. *See, e.g.*, *Kubrick*, 444 U.S. at 117. In reaching this balance, Congress necessarily contemplates the principles that justify statutes of limitations: (1) providing repose to potential defendants by encouraging potential plaintiffs to bring claims on a timely basis; (2) protecting defendants and courts from the prejudice caused by stale claims and deteriorated evidence; and (3) fostering judicial efficiency.

These goals and values are especially significant with regard to the limitations period for government agencies to bring actions for civil fines, penalties, or forfeitures. As courts have long recognized, Congress struck an important balance in Section 2462 of Title 28 of the United States Code and its predecessors, which generally gives government agencies five years to institute such enforcement actions (unless a more specific statutory limitation applies).

For the reasons stated by Petitioners, the interpretation of Section 2462 applied by the court below is inconsistent with the statute's plain language, structure, and history. Grafting a government "discovery" rule onto Section 2462 for violations that allegedly "sound in fraud" threatens a sea change in well-settled law about how to apply Section 2462's check on the Government's power to punish individuals and entities through civil enforcement penalties.

*Amicus* takes allegations of fraud seriously and recognizes and supports the Government's strong interest in combatting fraud. At the same time, *amicus* believes that the bright line Congress drew in adopting a generally applicable deadline serves a vitally important role in the administration of justice, and that it brings stability and certainty to the law. Predictability and consistency benefit all involved, including banks, which operate in a highly regulated industry and are often called on to provide discovery during investigations governed by Section 2462.

The Second Circuit's ruling substantially undercuts the values and goals served by Section 2462 (and, indeed, all statutes of limitations). To prevent the uncertainty and instability that it threatens for individuals and institutions, the holding below should be reversed.

## ARGUMENT

### I. The Ruling Below Undermines the Principle of Repose.

Statutes of limitations serve the vital function of providing repose. As this Court repeatedly has recognized, statutory limitations provide repose to

potential defendants by requiring potential plaintiffs to bring causes of action in a timely manner. *See, e.g., M'Cluny v. Silliman*, 28 U.S. 270, 279 (1830) ("By requiring those who complain of injuries to seek redress, by action at law, within a reasonable time, a salutary vigilance is imposed, and an end is put to litigation."); *Wood v. Carpenter*, 101 U.S. 135, 139 (1879) ("An important public policy lies at the[] foundation [of limitations statutes]. They stimulate to activity and punish negligence."); *Bell v. Morrison*, 26 U.S. 351, 360 (1828) (explaining that statute of limitations should be interpreted to be "what it was intended to be, emphatically, a statute of repose"). As this Court explained: "Statutes of limitations . . . in their conclusive effects are designed to promote justice by preventing surprises . . . . The theory is . . . that the right to be free of stale claims in time comes to prevail over the right to prosecute them." *Order of R.R. Telegraphers v. Ry. Express Agency*, 321 U.S. 342, 348-49 (1944); *see also John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133 (2008) ("Most statutes of limitations seek primarily to protect defendants against stale or unduly delayed claims."); *Wilson v. Garcia*, 471 U.S. 261, 271 (1985) ("In compelling circumstances, even wrongdoers are entitled to assume that their sins may be forgotten."); *Bd. of Regents v. Tomanio*, 446 U.S. 478, 487 (1980) ("[T]here comes a point at which the delay of a plaintiff in asserting a claim is sufficiently likely . . . to upset settled expectations that a substantive claim will be barred . . . ."); *Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 428 (1965) ("Such statutes 'promote justice by preventing surprises through the revival of claims that have been allowed to slumber. . . .'") (quoting *Order of R.R. Telegraphers*, 321 U.S. at

348-49); *Guar. Trust Co.*, 304 U.S. at 136 ("The statute of limitations is a statute of repose, designed to protect the citizens from stale and vexatious claims, and to make an end to the possibility of litigation after the lapse of a reasonable time. It has long been regarded by this Court . . . as a meritorious defense, in itself serving a public interest."); *3M Co. v. Browner*, 17 F.3d 1453, 1457 (D.C. Cir. 1994) ("Statutes of limitations also reflect the judgment that there comes a time when the potential defendant 'ought to be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations[.]'") (quoting Note, *Developments in the Law—Statutes of Limitations*, 63 Harv. L. Rev. 1177, 1185 (1950)).

Over a quarter of a century ago, in *United States v. Core Laboratories*, 759 F.2d 480, 481 (5th Cir. 1985), the Fifth Circuit recognized that allowing *the Government's* actions to supply the triggering event for Section 2462 would severely undermine the principle of repose. There, the Commerce Department brought an administrative action against Core Laboratories for alleged violations of the Export Administration Act, 50 U.S.C. § 2401 *et seq.* 759 F.2d at 481. When Core Laboratories refused to pay the penalty, the Commerce Department sued to enforce the penalty. *Id.* Core Laboratories asserted that, because more than five years had passed since the last alleged violation, the action was barred by Section 2462. *Id.* In response, the Government averred that its claim "accrued" when it sought civil penalties in the administrative action. The district court disagreed and dismissed the case. *Id.*

In affirming the district court, the Fifth Circuit explained:

> The progress of administrative proceedings is largely within the control of the Government. The [G]overnment is exempt from the consequences of its laches (quod nullum tempus occurrit regi). A limitations period that began to run only after the [G]overnment concluded its administrative proceedings would thus amount in practice to little or none.

*Id.* at 482-83 (citing *Guar. Trust Co.*, 304 U.S. at 132; *United States v. Hughes House Nursing Home, Inc.*, 710 F.2d 891, 895 (1st Cir. 1983); *N. Metal Co. v. United States*, 350 F.2d 833, 839 (3d Cir. 1965)). *See also Badaracco v. Commissioner,* 464 U.S. 386, 406 (1984) (Stevens, J., dissenting) (interpretation should be avoided which "would leave the statute open for that portion of eternity concurrent with [a prospective defendant's] life, whether he lives three score and ten or as long as Methuselah") (internal citation and quotation marks omitted)*, cited in Core Labs.,* 759 F.2d at 483 n.2.

Like the Government's position rejected in *Core Laboratories*, the Second Circuit's addition of a discovery rule fundamentally frustrates the goal of repose underlying Section 2462. Under the discovery rule, the triggering event for the limitations period is when the relevant federal agency "discovers" a violation. The Government, however, frequently is responsible for the time of its "discovery." Because "the progress of [an investigation] is largely within the control of the Government," which "is exempt from the consequences of its laches," government agencies potentially have the ability to bring civil enforcement claims for fines, penalties, and forfeitures

into perpetuity. *Core Labs.*, 759 F.2d at 482-83. Accordingly, potential defendants would have no assurance that the Government's time for investigation and action has passed.[2]

As members of a heavily regulated industry, financial institutions frequently are targets of civil enforcement actions brought by federal agencies. For example, the Office of the Comptroller of the Currency ("OCC") reported 37 civil money penalties actions, resulting in $41,992,773 in penalties during the 2011 fiscal year. OCC, Annual Report 41 (Nov. 3, 2011), *available at* http://www.occ.gov/publications/publications-by-type/annual-reports/2011AnnualReport.pdf. Likewise, the Federal Deposit Insurance Corporation ("FDIC") reported 5,192 active restitution and forfeiture orders, $3,633,426 collected as a result of criminal restitutions and forfeitures, and 550 enforcement actions initiated in fiscal year 2011.[3]

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[2] Allowing a federal agency to employ the discovery rule to obtain civil penalties—where it has not suffered any damages—is especially anomalous in the securities context considering the fact that private litigants, who in fact may have suffered damages, may *not* bring a cause of action more than five years following the conduct that allegedly caused them injury. *See, e.g.*, *McCann v. Hy-Vee, Inc.*, 663 F.3d 926, 930 (7th Cir. 2011) (holding that Section 1658(b), applicable to Section 10(b) private causes of action, is a statute of repose that extinguishes the right of action).

[3] The FDIC noted that the majority of these claims resulted from unfair or deceptive acts or practices committed by banks' third party vendors and "were the result of banks entering into new product markets through third-parties without maintaining sufficient oversight of vendors' activities." FDIC Report at 23.

FDIC, Annual Report 23, 38, 129 (Apr. 30, 2012), *available at* http://www.fdic.gov/about/strategic/report/2011annualreport/AR11final.pdf.[4]

The enormity of the risk to financial institutions becomes clearer when considering that Section 2462 governs a wide swath of government enforcement actions. At least eighty statutory provisions that provide for civil fines, penalties, or forfeiture do not contain or incorporate a different statute of limitations. At least fifteen of these statutory provisions, in ten different titles of the United States Code, apply directly to *amicus*'s members. *E.g.*, 2 U.S.C. § 1606(a) (failing to disclose lobbying activities); 7 U.S.C. §§ 9(10)(c) (manipulating commodities or swaps), 13a (same), 13a-1 (same); 12 U.S.C. §§ 1703(b)(7) (providing false information related to housing loan), 1735f-14(b)(F) (certifying false housing certificate), 1818(i) (Federal Deposit Insurance Act); 15 U.S.C. § 45(m)(1)(A) (engaging in unfair or deceptive acts or practices); 18 U.S.C. § 1034(a) (making false material statement to insurance regulator re-

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[4] The Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, requires the FDIC, OCC, Federal Trade Commission ("FTC"), Federal Reserve Board, Consumer Finance Protection Bureau ("CFPB"), National Credit Union Administration, and the Department of Housing and Urban Development ("HUD") to refer certain discrimination matters to the U.S. Attorney General. *Id.* § 1691e(g). Between 2009 and 2011, the DOJ received 109 referrals from the CFPB, FTC, and HUD. *See* Attorney General, 2011 Annual Report to Congress Pursuant to the Equal Credit Opportunity Act Amendments of 1976, at 2, 11-12 (March 2012), *available at* http://www.justice.gov/crt/about/hce/documents/ecoareport2011.pdf.

garding land, property, or security); 19 U.S.C. § 1593a(c)(1) (inducing or attempting to induce payment or credit with material false statement); 20 U.S.C. § 1082(g) (misrepresenting education loan finance charge); 22 U.S.C. § 3105(a) (failing to provide information for International Investment and Trade in Services Survey); 31 U.S.C. § 5330(e) (failing to register money transmitting business); 38 U.S.C. § 3710(g)(4) (making false certification regarding mortgage provided to veteran). It is likely that *all* provisions governed by Section 2462 indirectly affect financial institutions because the provisions apply to their customers and financial institutions may be required to provide discovery if a customer is under investigation.

The tremendous litigation risks that banks and their affiliates face is exacerbated by the Second Circuit's ruling below. Should that opinion stand, potential defendants (institutions and individuals alike) will be unable to reasonably assess their newly-expanded litigation risks. *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 150 (1987) ("This uncertainty has real-world consequences . . . . 'Defendants cannot calculate their contingent liabilities, not knowing with confidence when their delicts lie in repose.'") (quoting *Wilson*, 471 U.S. at 275).[5]

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[5] This uncertainty ultimately increases transaction costs and may create reluctance to participate in the marketplace. *See* Note, *SEC Enforcement Suits*, 94 Mich. L. Rev. 512, 529 (1996) ("If SEC enforcement suits could impose staggering fines on corporate entities at any time, the transaction costs of contracting would increase as parties would have to compensate for this risk of liability."); James W. Beasely, Jr., *Report of the Task Force on Statute*

Recognizing the important repose function that Section 2462 plays, most courts have not adopted the position taken by Respondent and the Second Circuit. *See, e.g.*, *SEC v. Bartek*, No. 11-10594, 2012 WL 3205446, at *3 (5th Cir. Aug. 7, 2012) (per curiam) (alleged securities violations); *Trawinski v. United Techs.*, 313 F.3d 1295, 1298 (11th Cir. 2002) (per curiam) (alleged Energy and Policy Conservation Act violation); *FEC v. Williams*, 104 F.3d 237, 240 (9th Cir. 1996) (alleged Federal Election Campaign Act violation); *3M Co.*, 17 F.3d at 1457 (alleged EPA violations); *Core Labs.*, 759 F.2d at 483 (collecting prior authorities); *United States v. Witherspoon*, 211 F.2d 858, 861 (6th Cir. 1954) (alleged Surplus Property Act violations).

Because Section 2462 should not be given an interpretation that "conflicts with a basic objective—repose—that underlies limitations periods," *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 187 (1997), and because "it would be utterly repugnant to the genius of our laws to allow such prosecutions a perpetuity of existence," *United States v. Mayo*, 1 Gall. 396, 26 F. Cas. 1230, 1231 (C.C.D. Mass. 1813) (No. 15,755) (Story, J.), the Court should reject the Second Cir-

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*of Limitations for Implied Actions by the Committee on Federal Regulation of Securities*, 41 Bus. Lawyer 645, 647 (1986) ("[M]anagements of publicly held companies, as well as their auditors and attorneys, are frequently unable to assess the impact of possible litigation . . . . This deprives investors of information adequate for informed evaluation of such companies' potential liabilities."); Mark T. Roche, Sean C. Adams & Scott H. Frewing, *Will the SEC Have Forever to Pursue Securities Violations?* SEC v. Gabelli, 44 Secs. Reg. & L. Rep. 1415, 1421 (July 23, 2012).

cuit's improper grafting of a "discovery" rule onto Section 2462.

## II. The Ruling Below Undermines the Principle of Preventing the Difficulties of Stale Claims.

An additional, closely-related purpose for statutes of limitations is the desire to prevent the practical difficulties caused by old claims. This principle is important for at least two reasons.

First, the principle seeks to protect defendants from the specter of having to mount a defense without the benefit of viable evidence. As the Court explained in *Burnett*:

> Statutes of limitations are primarily designed to assure fairness to defendants . . . . by preventing . . . claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared. The theory is that even if one has a just claim it is unjust not to put the adversary on notice to defend within the period of limitation . . . .

380 U.S. at 428; *see also Wilson*, 471 U.S. at 271 ("Just determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence is lost."); *Bell*, 26 U.S. at 360 ("[The statute of limitation] is a wise and beneficial law . . . to afford security against stale demands, after the true state of the transaction may have been forgotten, or be incapable of explanation, by reason of the death or removal of witnesses . . . to suppress those prejudices which may rise up at a dis-

tance of time, and baffle every honest effort to counteract or overcome them.").

Second, statutes of limitations also help ensure that court proceedings have just and credible outcomes based on the most accurate factfinding possible. *See Kubrick*, 444 U.S. at 117 ("[Limitations statutes] protect defendants *and the courts* from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence . . . .") (emphasis added). It would be exceedingly difficult for a court to find accurate facts where a defendant did not have notice of a potential claim and, hence, the opportunity to preserve the evidence necessary to put on a vigorous defense.

The Second Circuit's ruling interferes with this important function of Section 2462. If the discovery rule applies, defendants potentially will be forced to defend against claims that have been dormant for more than half a decade (and perhaps for more than a decade), unless the defendant is able to establish at summary judgment or trial that the Government could have discovered the alleged violation earlier. *See* Pet. App. at 21a-22a. As more time passes between the questioned conduct and the filing of an agency's cause of action, the more likely it will be that individuals involved in the relevant transactions or events no longer will be available to provide testimony necessary to the defense.

Additionally, documents related to the questioned conduct may not have been retained by the defendant or others. For example, financial institutions may retain relevant documents only for the time periods required by applicable statutes and regulations. The required retention periods often do not exceed five

years—the traditional time period provided for federal agencies to bring civil penalty claims under Section 2462. *See, e.g.*, 12 C.F.R. § 219.24 (requiring documentation for fund transfers and transmittals of funds to be retained for 5 years), 31 C.F.R. §§ 1010.306, -.420, -.430, -.630 (requiring documents identified in the Bank Secrecy Act to be retained for 5 years). *See generally* Robert F. Zielinski & Vito Petretti, *Records Retention: What Banks Don't Know Can and Likely Will Hurt*, 119 Banking L.J. 350, 352 (2002).

Moreover, in some instances, an agency's civil penalty claims could be based on conduct that the defendant did not suspect would be the subject of any government investigation or potentially result in a fine, penalty, or forfeiture. Thus, it is not unreasonable that a potential defendant (or a bank used by a potential defendant with relevant records) may have discarded or deleted documents related to dated transactions that a federal agency now suspects (or "discovers") to have given rise to a claim for a civil fine, penalty, or forfeiture. A rule that allows the Government to sleep on its rights only to bring a claim when a party's potential defense has been undermined creates the wrong incentives for federal agencies—as Congress recognized in enacting the generally applicable five-year statute of limitations. Such a rule should be rejected.

The concern about the difficulty caused by stale evidence embodied in statutes of limitations does not dissipate simply because a government agency brings a claim that allegedly "sounds in fraud" and is subject to Section 2462. If anything, a defendant's concerns about the inability to mount a defense are

more profound when facing such a government investigation because of the reputational harms that typically accompany such investigations. *See, e.g.*, Nathan Cortez, *Adverse Publicity by Administrative Agencies in the Internet Era*, 2011 BYU L. Rev. 1371, 1379 (2011) ("Adverse publicity—or simply the threat of it—often precedes or accompanies formal enforcement actions . . . . [C]apital markets and other audiences now process agency publicity swiftly and sometimes hastily . . . . Stock prices quickly reflect [this] new information."); Robinson B. Lacy, *Adverse Publicity and SEC Enforcement Procedure*, 46 Fordham L. Rev. 435, 440, 441 (1977) ("Sometimes the staff will decide not to recommend any action against the target, but the rumors and suspicions will persist. . . . The adverse publicity resulting from the institution of public enforcement proceedings may have as severe an impact on the respondent or defendant as any formal sanction ultimately imposed."); Ernest Gellhorn, *Adverse Publicity by Administrative Agencies*, 86 Harv. L. Rev. 1380, 1381 (1973) ("When the Government focuses adverse publicity on named parties, the consequences to such parties can be disastrous.").[6]

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[6] This Court has held that, ordinarily, no judicial review or remedy is available to defendants for market harms caused by negative publicity due to a government investigation or the government's adverse statement about a defendant. *See, e.g.*, *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980) (discussing company's complaint about negative publicity resulting from FTC investigation and concluding that "the expense and annoyance of litigation is 'part of the social burden of living

Indeed, under the Second Circuit's rule, defendants are doubly disadvantaged. They would have to rely on diminished evidence—if not deleted or destroyed—to prove both the underlying merits of the claim *and* the threshold issue of the Government's lack of due diligence. To the extent that the necessary evidence is no longer available to the defendant, a court entertaining civil penalty proceedings would be deprived of the data necessary to ensure the most accurate and credible factual determinations. Accordingly, the discovery rule undermines Section 2462's protections for defendants and courts.

## III. The Ruling Below Undermines the Principle of Judicial Efficiency.

A related justification for statutes of limitations is judicial efficiency. As this Court stated in *Burnett*, "[t]he courts ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights." 380 U.S. at 428; *see also John R. Sand & Gravel Co.*, 552 U.S. at 133 (identifying "judicial efficiency" as "a broader system-related goal" of statutes of limitations); *Panetti v. Quarterman*, 551 U.S. 930, 945 (2007) (recognizing that statute of limitations "promotes judicial efficiency and conservation of judicial resources, safeguards the accuracy of state court judgments by requiring resolution of constitutional questions while the record is fresh, and lends finality to state court judgments within a reasonable time") (citing *Day v. McDonough,* 547 U.S. 198, 205–06 (2006)); *Burnett v. Grattan*, 468 U.S. 42, 53 (1984) (recognizing that statutes of limitation employ "con-

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under government'"); *see also* Cortez, 2011 BYU L. Rev. at 1423.

siderations of judicial or administrative economy"); *Cooey v. Strickland*, 479 F.3d 412, 419 (6th Cir. 2007) (observing that "statutes of limitations . . . are designed to 'promote judicial economy and protect defendants' rights'").

The Second Circuit's ruling will severely undermine the judicial efficiency benefits that Section 2462's bright line has traditionally supplied. The ruling below will spawn collateral litigation on at least two threshold issues. First, as Petitioners point out, courts (or juries in many instances) will be required to determine, on a case-by-case basis, whether the federal agency bringing a civil penalty claim knew or reasonably should have known about the conduct on which its case rests. *See* Pet. Br. at 44-46; *see also* Pet. App. at 21a-22a. Determining whether the Government was—or should have been—on notice regarding the underlying conduct likely will involve protracted discovery and tangled factual disputes. For instance, potentially relevant to notice and due diligence will be any other investigations that the agency has conducted related to similar alleged conduct, as well as the agency's investigative techniques, vigor, decisionmaking, and resource allocation. The Government likely will claim that much of this data is protected and should not be disclosed based on various privileges (*e.g.*, the law enforcement privilege, attorney-client privilege, work product doctrine, or deliberative process privilege). *See* Pet. Br. at 44-45. Second, courts will be bogged down with adjudicating whether the underlying claim is brought under a statute that "sounds in fraud." *Id.* As a result, "scarce resources must be dissipated by useless litigation on collateral matters," *Wilson*, 471 U.S. at 275—litigation concerned solely with the applicabil-

ity of the statute of limitations (not the merits), a determination that should be possible by considering the straightforward statutory language of Section 2462, rather than by extended litigation.

As with the other major policies underlying statutes of limitations, the Second Circuit's holding below threatens to radically reduce the sound benefits of reducing collateral litigation that Section 2462 has traditionally offered to litigants, courts, and society. Reversing the court below in favor of the bright line rule set forth in the statute "avoid[s] intolerable . . . 'and time-consuming litigation'" on collateral issues. *Agency Holding Corp.*, 483 U.S. at 150 (quoting *Wilson*, 471 U.S. at 272).

* * *

In sum, the ruling below erroneously transforms Section 2462 by undercutting the principles foundational to statutes of limitations. Significant uncertainty and administrative burdens for citizens and regulated industries will follow from such a rule of law. Nearly two centuries ago, when faced with the question "whether the statute of limitations shall be restored to its original meaning, or be reduced . . . to a nullity," *Bell*, 26 U.S. at 354, this Court explained that "statute[s] of limitations [are] entitled to the same respect with other statutes, and ought not be explained away," *id.* at 361. Section 2462—and its straightforward statute of limitations—should be given full respect and effect, and a "discovery" rule should not be grafted onto the plain language of the statute.

## CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Second Circuit should be reversed.

Respectfully submitted,

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