No. 25-293

IN THE

Supreme Court of the United States

GENERAL DYNAMICS CORP., ET AL.,
Petitioners,

v.

SUSAN SCHARPF, ET AL.,
Respondents.

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

BRIEF OF AMICI CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America (the Chamber) is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. The Chamber regularly participates as *amicus curiae* in cases raising issues of national concern to the business community.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

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[1] Counsel of record for the parties received notice of amici's intent to file on September 25, 2025. No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

The Chamber's and NAM's members are frequent targets of litigation, and class-action litigation in particular, and thus have a strong interest in ensuring the rigorous and consistent enforcement of statutes of limitations as a safeguard against abusive and protracted lawsuits. The decision below conflicts with the decisions of this Court and other courts of appeals, and it threatens national uniformity on a rule that governs every federal limitations statute. Amici thus have a substantial interest in supporting Supreme Court review.

INTRODUCTION AND SUMMARY OF ARGUMENT

Statutes of limitations reflect fundamental legislative judgments that are vital to the business community's interests in fairness, judicial efficiency, and economic stability. Limitations rules ensure claims are brought while evidence is available, witnesses are accessible, and memories are fresh. And they provide legal certainty that allows businesses to allocate risk, plan investments, and close the books on past conduct. The fraudulent-concealment doctrine has long been understood as a narrow exception to these principles, permitting otherwise lapsed claims to be brought when the defendant engaged in affirmative deception to shield the facts that gave rise to the cause of action.

The Fourth Circuit's decision below upends the settled rule. It permits plaintiffs to evade statutes of limitations simply by alleging that defendants chose not to commit their conduct to writing. That transforms silence into concealment. But fraudulent concealment, as its very name makes clear, requires more than keeping a secret; it requires affirmative deception. By erasing that distinction, the Fourth Circuit

invites the resurrection of decades-old claims based on nothing more than allegations of nondisclosure.

The consequences for the business community are severe. If allowed to stand, the Fourth Circuit's rule would expose businesses to indefinite liability for ancient conduct that cannot be fairly defended. Employees move on, records disappear, and memories fade. Yet under the Fourth Circuit's approach, companies would face perpetual litigation exposure, forced to defend claims long after the evidence is gone. In effect, fraudulent concealment becomes an all-purpose escape hatch—an exception that swallows the rule. As Chief Judge Diaz observed in dissent, under such a regime "we needn't bother having a statute of limitations defense at all." App.35a.

This Court should grant the petition to restore the settled rule and preserve the balance between fairness to plaintiffs and repose for defendants. The Fourth Circuit's decision squarely presents the legal question whether the mere allegation of an unwritten agreement is sufficient to plead fraudulent concealment, and the split with the Fifth, Sixth, and Ninth Circuits is clear. Review is warranted to reaffirm that fraudulent concealment is a narrow exception reserved for affirmative deception—not a license to revive claims that are simply untimely.

ARGUMENT

I. Statutes of limitations serve essential policy objectives.

"Statutes of limitations are not simply technicalities." *Bd. of Regents of the Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 487 (1980) . They are legislative judgments that weigh finality against redress, *Gabelli*

v. SEC, 568 U.S. 442, 448 (2013), and they "have long been respected as fundamental to a well-ordered judicial system," *Tomanio*, 446 U.S. at 487. In that regard, they are indispensable to the fair administration of justice, balancing plaintiffs' rights to pursue legitimate claims with defendants' rights to certainty and repose.

That balance is not novel. As Chief Justice Marshall explained over two centuries ago, it "would be utterly repugnant to the genius of our laws" if expired claims could "be brought at any distance of time." *Adams v. Woods*, 6 U.S. (2 Cranch) 336, 342 (1805). Since then, this Court repeatedly has affirmed that limitations rules reflect a legislative judgment that, at some point, the right to be free from stale claims prevails over the right to prosecute them. *Gabelli v. SEC*, 568 U.S. 442, 447–48 (2013). Limitations periods bring "security and stability to human affairs." *Id.* at 448 (quoting *Wood v. Carpenter*, 101 U.S. 135, 139 (1879)).

The stability promised by limitations law rests on a "policy of repose, designed to protect defendants." *Burnett v. N.Y. Cen. R.R. Co.*, 380 U.S. 424, 428 (1965). By setting a fixed date when exposure ends, limitations periods allow businesses to assess potential liabilities, allocate risk, and plan for the future without being forced to hedge against lawsuits over decades-old alleged conduct. *See Gabelli*, 568 U.S. at 448.

Statutes of limitations also facilitate fair and just adjudication of disputes. The adversarial process depends on access to evidence and testimony and "is obviously more reliable if the witness or testimony in question is relatively fresh." *Tomanio*, 446 U.S. at 487. Indeed, "there comes a point at which the delay

of a plaintiff in asserting a claim" likely will "impair the accuracy of the fact-finding process." *Id.* The further litigation is from its animating events, the harder it becomes to establish the truth. Limitations periods thus "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Gabelli*, 568 U.S. at 448 (citation omitted).

Finally, statutes of limitations promote judicial efficiency. If decades-old conduct could trigger new disputes, courts would be burdened by the impossible task of relitigating matters long thought settled, diverting scarce judicial resources from timely controversies. As this Court has explained, courts "ought to be relieved of the burden of trying stale claims when a plaintiff has slept on his rights." *Burnett*, 380 U.S. at 428.

II. The business community depends on predictable statutes of limitations.

Few legal rules are more indispensable to the business community than statutes of limitations. By setting a time limit on when a claim can be brought, legislatures provide the foundations on which strong businesses can thrive: stability, fairness, and economic efficiency. For businesses large and small, limitations periods are vital safeguards against uncertainty, unbounded liability, and the erosion of reliable legal process.

The principle of repose is paramount. Certainty that old claims will not rise from the dead allows executives and managers to make long-term plans, investors to assess litigation risk accurately, and companies to innovate without the fear that every

step forward might reawaken disputes from the distant past. Clear limitations periods give businesses the ability to assess exposure and move forward. Without that clarity, every closed file could become an open case, and every past decision suddenly would be back in play.

Judicial fairness likewise looms large for businesses. Limitations provisions "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, whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise." *United States v. Kubrick*, 444 U.S. 111, 117 (1979). Commercial litigation depends on documents, witness recollections, and data. As time passes, all of these degrade. Companies generate huge volumes of electronic and paper records every day, and they cannot bear the burden of retaining every document or preserving every email indefinitely on the off chance that someone alleges misconduct years later. Employees move on, forget details, or pass away. Technology platforms become obsolete, rendering old data unrecoverable. And sometimes evidence simply vanishes through no fault of anyone, such as when records are destroyed in hurricanes or floods. Without fixed deadlines for bringing suit, businesses are left defending decades-old claims when what is most important to their defenses is least accessible. Likewise, statutes of limitations permit businesses to

release holds on documents and data after a reasonable time without bearing the cost of preservation or facing spoliation sanctions.[2]

Finally, the ability to assess litigation exposure drives investment, economic growth, and corporate innovation.[3] Mergers, acquisitions, and capital expenditures depend on companies' ability to price risk accurately. If legal exposure never ends, deals become harder to negotiate and more expensive to close. An acquiring party might insist on steep discounts—or walk away entirely—if they cannot get clarity about the risks they are assuming. Statutes of limitations give structure to those decisions and avoid needless waste of economic potential.

In sum, statutes of limitations serve businesses by drawing hard lines that set the outer boundaries of

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[2] *See* Thomas M. Jones, et al., *Formulating a Records Retention Policy*, 50 No. 1 DRI For Def. 42 (2008) (identifying statutes of limitations as an "important consideration for an organization seeking to formulate a records retention policy" because they "tend to provide some guidance regarding how long business records may be of legal significance").

[3] Tommaso Oliviero, et al., *Liquidity Effects on Litigation Risk: Evidence from A Legal Shock*, 67 J.L. & Econ. 103, 104 (2024) (discussing how "firms exposed to higher litigation risk are likely to increase their cash holdings"); M. Kabir Hassan, et al., *Courting Innovation: The Effects of Litigation Risk on Corporate Innovation*, J. Corp. Fin. 71 (2021), at 18 (concluding "that a reduction in litigation risk increases innovation outcomes").

judicial power and protect defendants from indefinite second-guessing of past conduct.

III. The fraudulent-concealment doctrine is narrow.

Of course, hard lines sometimes need soft edges. Accordingly, the law recognizes narrow, carefully defined exceptions to statutes of limitations—such as the fraudulent-concealment doctrine. The exceptions reflect a basic fairness judgment: When a diligent plaintiff could not have known of a claim, or was affirmatively misled, they can get more time. *See Tomanio*, 446 U.S. at 487–88. In those circumstances, the rule can bend to ensure justice is not denied simply because the clock ran faster than the facts. But this Court has warned that "[t]he virtue of relying on equitable tolling lies in the very nature of such tolling as the exception, not the rule." *Rotella v. Wood*, 528 U.S. 549, 561 (2000).

To that end, this Court has long recognized that the fraudulent-concealment doctrine applies narrowly. A plaintiff raising fraudulent concealment must "state distinctly *the particular act of fraud*" that prevented discovery of the claim, when it was uncovered, and why ordinary diligence could not have uncovered it sooner. *See Stearns v. Page*, 48 U.S. 819, 829 (1849) (emphasis added). Critically, the affirmative act of concealment cannot be "mere silence." *Wood*, 101 U.S. at 143. "There must be some trick or contrivance intended to exclude suspicion and prevent inquiry." *Id*. If silence were enough, the exception would

quickly swallow the rule and "no man's property or reputation would be safe." *Stearns*, 48 U.S. at 829.[4]

Consistent with the narrow scope of this doctrine, lower courts have applied it to affirmative acts, not omissions. Those acts might include burning or shredding documents, *State of N.Y. v. Hendrickson Bros.*, 840 F.2d 1065, 1084–85 (2d Cir. 1988), or issuing false, misleading press releases, *Conmar Corp. v. Mitsui & Co. (U.S.A.)*, 858 F.2d 499, 505 (9th Cir. 1988). Similarly, fraudulent concealment has been shown when defendants misreported account balances, conducted fraudulent transfers, or exercised their power to shield their activity from scrutiny. *Chaaban v. Criscito*, 468 F. App'x 156, 161 (3d Cir. 2012). These are the sorts of affirmative, deceptive acts the fraudulent-concealment doctrine is designed to reach.

By contrast, defendants who simply fail to document their alleged misconduct are not engaged in an affirmative act of trickery. That kind of "passive concealment," in the absence of a duty to disclose, is no different than "keeping someone in the dark." *Thorman v. Am. Seafoods Co.*, 421 F.3d 1090, 1095–96 (9th

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[4] Courts have recognized that silence can qualify as fraudulent concealment when "the defendant has an affirmative duty to disclose the relevant information to the plaintiff." *Sprint Commc'ns Co. v. F.C.C.*, 76 F.3d 1221, 1226 (D.C. Cir. 1996). When a defendant has the duty to speak, silence *is* the affirmative act of deception, no different than an outright misrepresentation. Outside that narrow duty-to-disclose context, however, silence does not constitute the "trick or contrivance" required to toll the limitations period. *Wood*, 101 U.S. at 143.

Cir. 2005). That "is not the same thing as affirmatively misleading him." *Id.* at 1096. "[F]or fraudulent concealment to toll the statute, there must be some act of fraud over and above making the secret agreement in the first place." *Davidson v. Pinnacle W. Cap. Corp.*, 117 F.3d 1424, at *1 (9th Cir. 1997) (table opinion).

IV. The Fourth Circuit's holding undermines the policies behind statutes of limitations.

The Fourth Circuit's rule departs from the foundational purposes of statutes of limitations, creating a conflict that only this Court can resolve. By holding that the mere allegation of an unwritten agreement can satisfy the requirement of an "affirmative act" of concealment, the Fourth Circuit mapped an end-run around the limitations bar in nearly every case. That rule bends the fraudulent-concealment doctrine to its breaking point and, if left intact, will carry serious consequences not only for the law, but for the broader business community.

If the bare allegation that an agreement was not written down is enough to avoid dismissal, then almost any long-expired claim can be resurrected simply by alleging nondisclosure. Plaintiffs could revive decades-old claims by alleging that defendants agreed to fix prices but never put the arrangement into writing—all without pleading a single affirmative act designed to mislead. Under that regime, virtually any expired claim can be rebranded as concealed misconduct. Defendants would have no "statute of limitations defense at all." App.35a (Diaz, C.J., dissenting).

The Fourth Circuit's rule has no limiting principle to prevent such outcomes. To the contrary, it explicitly equates the "careful[] avoid[ance]" of documentation

with the kind of affirmative deception the doctrine requires. App.2a (holding that "neither logic nor our precedent supports distinguishing between defendants who destroy evidence of their conspiracy and defendants who carefully avoid creating evidence in the first place"). Future plaintiffs will seize on this rule to argue that nearly any unrecorded communication or confidential arrangement can qualify as concealment, effectively tolling limitations indefinitely. By concluding "an agreement that is kept 'non-ink-to-paper' to avoid detection can qualify as an affirmative act of concealment," the Fourth Circuit provides a ready-made playbook. App.7a.

The risk is not confined to antitrust. Fraudulent concealment applies to "every federal statute of limitation." *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946). The Fourth Circuit's rule would apply to any unwritten agreement, informal arrangement, or confidential understanding alleged as concealment. Plaintiffs with time-barred claims under RICO, ERISA, the securities laws, and beyond will look to the Fourth Circuit's decision as a roadmap for avoiding dismissal. They will plead vague allegations of an "unwritten" or "secret" agreement and contend that is enough to toll the statute—at least to survive an early motion to dismiss and proceed into costly discovery. *But see Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007) (emphasizing the need for trial courts to "insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed") (citation omitted).

Rule 9(b)'s particularity requirement for fraud *should* stop those kinds of vague allegations from moving forward. The rule gives defendants "fair warning of the claims" they will face and "prevent[s] harm"

by "weed[ing] out those cases with no 'reasonably founded hope' of substantiation, even after a long and expensive discovery process." *Colonial Oaks Assisted Living Lafayette, LLC v. Hannie Dev., Inc.*, 972 F.3d 684, 687 (5th Cir. 2020) (Willett, J.) (quoting *Twombly*, 550 U.S. at 559). Yet if alleging the absence of a paper trail suffices for fraudulent concealment, Rule 9(b) would be reduced to a parchment barrier.

Nor is the risk limited to conspiracy claims. A company that discovers a product defect but does not issue a press release may find long-dormant claims revived years after the fact. A company with a senior executive who commits misconduct but does not disclose it publicly could face concealment allegations decades later. And a company that chooses not to issue a voluntarily correction to a prior regulatory filing may face tolling allegations long after the events at issue. *See supra* note 4 (noting that absent a specific duty to disclose, such silence cannot be treated as an affirmative act of concealment). Under the decision below, silence in any of these contexts could toll limitations indefinitely, opening the door to perpetual litigation exposure across virtually every field of federal law.

That is especially dangerous in large-scale class actions, where plaintiffs can wield the specter of sprawling discovery, massive judgments, and reputational harm to pressure defendants into settlements—regardless of the underlying merit. *See, e.g., Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 739 (1975) (recognizing that securities class actions "present[] a danger of vexatiousness different in degree and in kind from that which accompanies litigation in general"). As this Court has observed, "[f]aced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims."

AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 350 (2011). The pressure is even greater when claims stretch back decades, well beyond the window during which any meaningful defense can be mounted.

The better rule—the one consistent with this Court's historic articulation—is that equitable tolling doctrines such as fraudulent concealment are the exception, not the rule. They require not just silence, but affirmative deception. That standard ensures truly concealed claims can still be heard while simultaneously guarding against open-ended exposure and erosion of repose. The Fourth Circuit's divergent approach upends that balance. It should not stand.

CONCLUSION

For these reasons, *amici curiae* respectfully urge the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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