No. 11-1428

IN THE
Supreme Court of the United States

CHEVRON CORPORATION,
Petitioner,
v.
HUGO GERARDO CAMACHO NARANJO, *ET AL.*,
Respondents.

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

MOTION OF HALLIBURTON CO. FOR LEAVE TO FILE AS *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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MOTION OF HALLIBURTON CO. FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Pursuant to this Court's Rule 37.2, Halliburton Company hereby respectfully moves for leave to file the accompanying brief as *amicus curiae* supporting petitioner in this case. The consent of counsel for petitioner has been obtained and is on file with the clerk. Consent of counsel for respondents, however, was refused.

Since 1919, Halliburton has been one of the world's largest providers of products and services to the energy industry. Its customers rely upon it for assistance in every phase of oil and gas exploration and production. Halliburton has operations across the United States and in approximately 80 foreign countries.

This case addresses the availability of relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, particularly in the context of cases falling within federal courts' diversity jurisdiction. The decision below held that the availability of relief under that Act turned on whether the underlying law, in this case a New York statute, intended to allow suits to be brought by the party seeking declaratory relief. Although the state statute was facially silent on that point, the court of appeals read the statute's structure to reveal an implied intent to permit only coercive, and not declaratory, actions; the statute, it concluded, was designed to "promote" rather than "impede" the enforcement of judgments. Whether those considerations may properly be invoked to preclude access to federal declaratory relief is a matter of grave concern to Halliburton, which has contractual and other business relationships that span many jurisdictions. The decision in this case, moreover, upsets more than a gen-

eration of settled law and expectations. Halliburton, like other citizens, desires and indeed needs certainty about when it may turn to the federal courts to resolve actual controversies pursuant to the Declaratory Judgment Act.

Halliburton's broad interstate and international business operations frequently have led it to bring declaratory judgment actions, and to respond to those brought by others. Halliburton has a strong interest in the availability, and extensive experience regarding the utility, of declaratory judgment actions for the expeditious resolution of live commercial disputes. In view of its interests and unique perspective on these issues, Halliburton respectfully requests that this Court grant it leave to participate as *amicus curiae* by filing the accompanying brief in support of the petition for a writ of certiorari.

Respectfully submitted.

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QUESTION PRESENTED

The Declaratory Judgment Act ("DJA"), 28 U.S.C. §§2201-2202, provides that federal courts may, "[i]n a case of actual controversy * * * declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. §2201(a). The question presented is:

Was the Second Circuit correct that the DJA does not permit a party to assert a defense to suit anticipatorily where the underlying substantive statute does not itself authorize such declaratory relief?

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BRIEF OF *AMICUS CURIAE* HALLIBURTON CO. IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*[1]

For nearly a century, *amicus curiae* Halliburton Company has provided services and products at all stages of exploration and production in the energy industry. With over 70,000 employees across the United States and in 80 foreign countries, Halliburton is involved in cutting-edge developments and complex commercial transactions worldwide. In view of the disputes those activities can generate, Halliburton has a keen interest in

[1] No counsel for a party authored this brief in whole or in part. No person or entity other than *amicus* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Halliburton timely notified the parties of *amicus*'s intent to file this brief. Petitioner consented in a letter filed with the clerk; respondents refused consent.

preserving the value of the declaratory-judgment mechanism at issue in this case. Declaratory actions can resolve actual controversies regarding Halliburton's contracts, patents, and insurance relationships expeditiously and efficiently—*before* breaches or irreparable injuries occur. Halliburton has been, and expects to be again, involved in such declaratory suits in federal courts across the country. But the judgment below injects uncertainty about when courts may entertain such actions. Indeed, it threatens to divest district courts of the ability to entertain declaratory actions unless the underlying statute or common-law action appears to specifically countenance proceeding in the declaratory form.

The Second Circuit's courthouse-closing decision is particularly problematic for companies, like Halliburton, that operate globally and may confront litigation abroad. While that ordinarily presents no problem, the Second Circuit's decision categorically shuts the federal courthouse doors to parties who may need to obtain a declaration that an utterly corrupt foreign judgment is not enforceable under domestic law. The absence of such a remedy increases the risks of participating in international markets, harms U.S. companies, and defies the intent of Congress. *Amicus* thus has a keen interest in, and unique insights into, the issues raised by this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

In the decision below, the Second Circuit held that a state statute authorizing enforcement of foreign money judgments cannot support declaratory judgment actions by foreign-suit defendants. The Second Circuit reasoned that New York's Recognition Act was "motivated by an interest to *provide for* the enforcement of foreign judgments, not to prevent them." Pet. App. 19a. Eighty years ago, before the enactment of the Declaratory

Judgment Act ("DJA"), 28 U.S.C. §§ 2201-2202, that premise might have justified the judgment below. But at least since Congress passed the intentionally expansive DJA in 1934, *either* party to a sufficiently concrete dispute may seek a declaration on a dispositive legal question, so long as the court has subject-matter jurisdiction. It is no less valid for a potential defendant to sue under that Act for a declaration that its opponent has no rights against it, than for that defendant to sue seeking a declaration that it has some affirmative right vis-à-vis its opponent.

The Second Circuit's contrary view—limiting the DJA to cases in which the party bringing suit has an affirmative statutory or common-law right—would render the DJA ineffectual in a broad swath of cases. Few statutes or common-law actions are "motivated" to forestall plaintiffs' suits by inviting defendants to establish nonliability. That was the gap the Declaratory Judgment Act filled. Chevron should not be required to do what the Second Circuit commands—wait to "present its defense to the recognition and enforcement of the Ecuadorian judgment in New York if, as and when [respondents] seek to enforce their judgment in New York." Pet. App. 30a.

The Second Circuit erred in ignoring the Declaratory Judgment Act's text and this Court's opinions in favor of attempting to divine state policy from a uniform act that is at best silent on the matter. The DJA and this Court's precedents (like the decisions of other federal courts over the past half century) reveal broad authority to entertain declaratory actions, state policy notwithstanding. The scope of that Act—including who may invoke it—is a procedural question governed by federal law, not a question of substantive state law. The proper appellate role is to review for abuse of discretion, not to categorically and

anticipatorily shut the courthouse doors on *every* declaratory plaintiff who, like Chevron, seeks to resolve a dispute under a statute or common-law action where it asserts substantial defenses to liability.

ARGUMENT

Rather than examine the text or history of the Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201-2202, to determine its proper scope, the Second Circuit's decision in this case focused on a state-law provision that provides the substantive rules in this diversity suit. That focus reflects a fundamental misunderstanding of the DJA and its scope. It does violence to the DJA's text and corrodes its salutary purpose of giving district courts considerable discretion to entertain otherwise ripe suits within their jurisdiction—regardless of whether they are brought by a party seeking a declaration that it has certain rights, or by a party seeking a declaration that its opponents lack those rights. The decision, moreover, portends broad and unfortunate consequences for the business community and for the jurisdiction of federal courts.

A. The Text and History of the Declaratory Judgment Act Militate Decisively Against the Second Circuit's Narrow Construction

1. The text of the DJA provides an intentionally broad remedy designed for maximum utility within the bounds of the case-or-controversy and other jurisdictional requirements. It provides, in relevant part:

> In a case of actual controversy within its jurisdiction, except with respect to [certain federal tax and civil "antidumping or countervailing duty" disputes], any court of the United States, upon the filing of an appropriate pleading, may *declare the rights and other legal relations* of any interested

> party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a) (emphasis added).

That plain and unambiguous text makes clear that the DJA authorizes the declaratory judgment at issue here. Chevron has an "actual controversy" with respondents. Respondents believe that they can legally divest Chevron of some $17 billion; Chevron believes that New York law affords it immunity from enforcement because "the [foreign] judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law." N.Y. C.P.L.R. 5304(a). The dispute is "within [the district court's] jurisdiction" by virtue of the parties' diversity of citizenship. The necessary amount in controversy is exceeded by billions of dollars. The DJA is clear that, in such a case, the district court is not limited to declaring Chevron's affirmative "rights," but may also resolve "other legal relations." 28 U.S.C. § 2201(a). And the district court may do so "*whether or not*" "further relief is or could be sought" by Chevron under some state statute or common-law cause of action. The textual limitations of the DJA thus are amply satisfied here.

Notwithstanding the DJA's broad textual scope, the decision below added a new, extra-statutory requirement: It held that declaratory judgments are available in diversity *only* when state law creates an affirmative "right"—indeed, creates a cause of action—in the declaratory-judgment plaintiff's favor; and it forecloses use of the DJA to seek a declaration of non-liability or non-enforceability when the party seeking the declaration is

asserting what is in effect a defense.[2] But that limit finds no basis in the DJA's text, which allows declarations of "rights and other legal relations," and which nowhere requires that the party seeking the declaration otherwise have the right to assert a cause of action under state law. And the limit finds no basis in common sense. If New York law specifically authorized any party with an affirmative defense to bring a direct suit to establish nonliability, that party would have no *need* for the DJA. The Second Circuit's test thus is not merely extra-textual; it is counter-textual.

The Second Circuit's effort to engraft an additional exception onto the statue is particularly inappropriate because the DJA already delineates the cases categorically excluded from its scope. The year after Congress passed the DJA, one federal court entertained a declaratory action regarding federal taxes. See *F.G. Vogt & Sons, Inc.* v. *Rothensies*, 11 F. Supp. 225 (E.D. Pa. 1935). Congress immediately withdrew all federal-tax issues from the district courts' declaratory reach. See Act of Aug. 30, 1935, ch. 829, § 405, 49 Stat. 1014, 1027. Congress has since modified that prohibition and added new

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[2] The court of appeals first ruled that Chevron could not proceed directly under New York's Recognition Act because that law was "motivated by an interest to *provide for* the enforcement of foreign judgments, not to prevent them." Pet. App. 19a. The court then superimposed that putative state-law preference onto the DJA. It ruled that the DJA "does not extend to the declaration of rights that do not exist under law." *Id.* at 26a-27a. It thus appears to have precluded the DJA suit here because Chevron was not asserting a "right" under state law but a defense against enforcement. And it further declared that, because the DJA is "procedural only"—neither creating rights nor a federal cause of action—the fact that Chevron could not assert a cause of action under New York's Recognition Act also precluded it from asserting its defense anticipatorily under the DJA. *Ibid.*

ones (such as for categories of "antidumping" litigation). The statutory text thus itself indicates the categorical exclusions Congress intended to impose.

Congress did not need to impose other categorical limitations in the DJA because it could comfortably rely on district courts to exercise their broad discretion to screen out inappropriate cases. See *Wilton* v. *Seven Falls Co.*, 515 U.S. 277, 286 (1995). That "discretion, and the breadth of leeway we have always understood it to suggest, distinguish the declaratory judgment context from other areas of the law in which concepts of discretion surface." *Id.* at 286-287. Congress "sought to place a remedial arrow in the district court's quiver" to be used in the sound exercise of its discretion. *Id.* at 288. But the Second Circuit's decision here improperly denies district courts that remedial arrow on a categorical basis.

2. To the extent the text could leave doubt, the DJA's history and development erase it. The framers of the DJA would be astounded to learn that the procedural reform they worked to bring to the federal courts could be so casually undermined in diversity cases, effectively rendering the DJA unavailable except where state law renders it superfluous.

First proposed in 1919, 57 Cong. Rec. 1080 (Jan. 7, 1919) (S. 5304), and proposed again in every Congress until enactment in 1934, Act of June 14, 1934, ch. 512, 48 Stat. 955, 956, the DJA was the subject of extensive consideration. During those 15 years, many States had adopted declaratory acts of their own, Doernberg & Mushlin, *The Trojan Horse: How the Declaratory Judgment Act Created a Cause of Action and Expanded Federal Jurisdiction While the Supreme Court Wasn't Looking*, 36 UCLA L. Rev. 529, 561 n.148 (1989); the Uniform Declaratory Judgment Act had been adopted, *id.* at 557; and the American Bar Association had repeatedly and

enthusiastically embraced the procedural reform, *id.* at 551 n.94. But congressional enthusiasm was dampened by decisions of this Court suggesting that state declaratory actions would not satisfy the Article III case-or-controversy requirement. See *id.* at 558-560 (describing *Liberty Warehouse Co.* v. *Grannis*, 273 U.S. 70 (1927); *Liberty Warehouse Co.* v. *Burley Tobacco Growers' Coop. Mktg. Ass'n*, 276 U.S. 71 (1928); and *Willing* v. *Chi. Auditorium Ass'n*, 277 U.S. 274 (1928)). In a 1933 diversity case, however, this Court dismissed its earlier concerns and held that state declaratory actions *could* be asserted in federal court. See *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Wallace*, 288 U.S. 249, 263-265 (1933). Congress responded by adopting the DJA the next year. This Court did not retreat from *Wallace*, but instead embraced the new DJA in *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227 (1937). It has not deviated from that course in the past 75 years.

Far from showing that diversity actions should be disfavored under the DJA or rejected unless *state law* would allow the equivalent of declaratory relief, the DJA's 15-year legislative history identifies diversity cases as prototypical disputes in which declaratory relief is helpful, emphasizing (for example) the need to allow parties to bring pre-breach suits to obtain a declaration of contractual rights. See, *e.g.*, 76 Cong. Rec. 697 (Dec. 19, 1932) (discussing H.R. 4624); 69 Cong. Rec. 1682 (Jan. 18, 1928) (discussing H.R. 5623); *An Act To Amend the Judicial Code by Adding a New Section, To Be Numbered 274D: Hearings on H.R. 5623 Before a Subcomm. of the S. Comm. on the Judiciary*, 70th Cong. 34, 47-54 (Apr. 27 & May 18, 1928) (discussing contract and other diversity cases that could benefit from declaratory treatment); *Legislation Recommended by the American Bar Association: Hearing on H.R. 5030, H.R. 10141, H.R. 10142,*

and H.R. 10143 Before the H. Comm. on the Judiciary, 67th Cong. 10 (Feb. 21, 1922) (statement of Mr. Taft).

Debate on the House floor expressly referenced diversity suits involving important but decidedly non-federal questions:

> [W]ill cases ordinarily are settled and determined in the State courts, but there are cases where will cases come into the Federal courts, I believe, where there is a question of diverse citizenship, * * *; and if there is any one class of cases where any one individual ought to have the right to go before the court, without the consent of all the rest of the parties, and ask to have a construction of an instrument before there is anything done by the parties on one side or the other, and to save litigation and expense to the parties, it is in will cases, and that is exactly what this legislation would allow you to do in respect of such a case in the Federal court.

69 Cong. Rec. 1683 (Jan. 18, 1928) (statement of Rep. Stobbs) (discussing H.R. 5623). Thus, the DJA—even with respect to diversity cases—was conceived and enacted to "relieve[] potential defendants 'from the Damoclean threat of impending litigation which a harassing adversary might brandish, while initiating suit at his leisure—or never.'" 10B C. Wright *et al.*, *Federal Practice and Procedure* § 2751, at 457 (3d ed. 1998 & Supp. 2012) (quoting *Japan Gas Lighter Ass'n* v. *Ronson Corp.*, 257 F. Supp. 219, 237 (D.N.J. 1966)).

Nothing in the DJA's history suggests that Congress meant to leave the sword of Damocles suspended over everyone's heads simply because state law did not itself provide the party seeking a declaratory judgment a right to sue. And "*[m]ost* of the discussion and debate" between 1919 and 1934 "dealt with cases concerning issues of state law that would be raised in a federal action

through the district court's diversity jurisdiction," and "not actions brought as federal question cases." Doernberg & Mushlin, *supra*, at 563 n.159, 569-570 (emphasis added).

To the extent concerns about expanding jurisdiction through the DJA have arisen, they have developed in federal-question, not diversity, cases. See, *e.g.*, Doernberg & Mushlin, *supra*, at 544; see generally *Franchise Tax Bd.* v. *Constr. Laborers Vacation Trust*, 463 U.S. 1 (1983). As the Second Circuit noted, the DJA is "'procedural only.'" Pet. App. 27a (quoting *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950)). "Diversity cases pose little problem" in that respect. 10B Wright *et al.*, *supra*, § 2766, at 645. "The usual rules apply in determining the existence of diversity and of the requisite amount in controversy." *Id.* at 645-646. And the fact that the "realistic position of the parties is reversed" in DJA suits—with the declaratory plaintiff "seeking to establish a defense" and the declaratory defendant seeking to establish liability, *Pub. Serv. Comm'n* v. *Wycoff Co.*, 344 U.S. 237, 248 (1952)—creates no additional complications. The basic requirements for diversity jurisdiction, namely diverse parties and a sufficient amount in controversy, are unaffected because there is no jurisdictional significance to *which* party asserts a claim.

However, because of the role of the "face of the complaint" in *federal question* cases—in determining whether the case "arises under" federal law—reversing the position of the parties can create complexity in those cases. 10B Wright *et al.*, *supra*, § 2767, at 649, 650. And even there, the relevant "cause of action" is one that the declaratory defendant could have asserted in an ordinary lawsuit. "Where the complaint in an action for declaratory judgment seeks in essence to assert a defense to an

impending or threatened state court action, it is the character *of the threatened action*, and not of the defense, which will determine" federal question jurisdiction. *Pub. Serv. Comm'n*, 344 U.S. at 248 (emphasis added). Thus, even if only the declaratory-judgment defendant could have asserted the federal cause of action absent the DJA, the DJA allows the declaratory-judgment plaintiff to assert that cause of action to have his rights adjudicated. See *Md. Cas. Co.* v. *Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941). "It is immaterial that frequently, in the declaratory judgment suit, the positions of the parties in the conventional suit are reversed; the inquiry is the same in either case." *Ibid.* (citation omitted). That statement applies with no less force in diversity cases.

Indeed, the DJA was enacted precisely to "g[i]ve a right of action to a person involved in a genuine dispute with a party who could sue, but for some reason refused to do so." Doernberg & Mushlin, *supra*, at 553. "[T]his use of the declaratory judgment" was called "a 'negative declaration.'" *Ibid.* (quoting Borchard, *The Declaratory Judgment—A Needed Procedural Reform, Part I*, 28 Yale L.J. 1, 8 (1918)). A "major theme of the [DJA's] legislative history" was that the DJA "would aid citizens by eliminating intolerable uncertainties in their legal and business relations." *Id.* at 562 n.154 (citing, *inter alia*, a 1928 letter from then-Chief Judge Cardozo extolling the proposed federal legislation as "'a useful expedient to litigants who would otherwise have acted at their peril, or at best would have been exposed to harrowing delay'").

3. At bottom, the Second Circuit's categorical bar to declaratory relief in cases like this one appears to rest on a pre-1934 mindset about what constitutes the "actual controversy" required by the Act. See 28 U.S.C. § 2201(a). The Second Circuit denigrated the detailed analysis of the facts and equities undertaken by the dis-

trict court as an "advisory opinion," Pet. App. 29a, asserting that there is little "to be gained by provoking a decision about the effect in New York of a foreign judgment that may never be presented in New York." *Ibid.* But that was the critique offered before this Court recognized the legitimacy of declaratory judgments.

Just like the Second Circuit here, critics of the DJA claimed that, if the party with the coercive cause of action has not sued, resolving the dispute would be necessarily premature—perhaps the other party to the contract, or the insured individual whose coverage is uncertain, would never sue, or would sue elsewhere. The "traditional approach" before the DJA thus was to force those impaired by another's threats of enforcement to "await a suit." 10B Wright *et al.*, *supra*, § 2751, at 455. That is precisely what the Second Circuit did here, urging that "Chevron will have its opportunity to challenge the judgment's enforcement under [state law] at such time, if any, as judgment-creditors seek to enforce the judgment in New York." Pet. App. 20a; *id.* at 30a (similar). A pre-1934 court could hardly have expressed more clearly the limitations of litigation before the DJA's enactment. But the DJA was enacted to relieve those with a sufficiently concrete controversy of the necessity of waiting; to eliminate the intervening uncertainty; and to allow them instead to initiate an action to resolve that live dispute.

B. The Second Circuit Improperly Exalts Its View of State Law Over Federal Procedure

The court of appeals made a fundamental mistake by focusing its attention on New York procedure—*i.e.*, on whether state law would provide Chevron with a right of action—rather than examining the scope of the federal procedural device Congress created through the DJA. Focusing on New York's version of the Uniform Foreign Country Money Judgments Recognition Act (the "Rec-

ognition Act"), N.Y. C.P.L.R. 5301 *et seq.*, the Second Circuit asserted:

> Nothing in the language, history, or purposes of the [Recognition] Act suggests that it creates causes of action by which disappointed litigants in foreign cases can ask a New York court to restrain efforts to enforce those foreign judgments against them * * *.

Pet. App. 23a. The Second Circuit then concluded that, absent an independent "cause of action" or permission to assert a defensive suit to forestall liability under state law, no federal declaratory judgment action could be asserted in a diversity case. See *id.* at 27a; p. 6 n.2, *supra.*

To state that proposition is to refute it. For decades, it has been settled law that, in diversity cases, state law controls substance but federal law controls procedure. For over 50 years, the lower courts have enforced that rule in this precise context—where state law prohibits declaratory actions but the federal DJA allows them.

1. *This Court's Cases Preclude Importing State Preferences into Federal Procedure*

This Court's declaratory-action jurisprudence has long made clear that state preferences do not bind federal courts: "[T]hat the declaratory remedy which may be given by the federal courts may not be available in the State courts is immaterial." *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 674 (1950). The Court recently made the same point in the class-action context, holding that Rule 23 permits federal courts sitting in diversity and applying a New York statute to certify a class action even when doing so would be *expressly* forbidden by state law. *Shady Grove Orthopedic Assocs., P.A.* v. *Allstate Ins. Co.*, 130 S. Ct. 1431 (2010). "[T]he substantive nature of New York's law, or its substantive purpose,

makes no difference. A Federal Rule of Procedure is not valid * * * depending upon whether its effect is to frustrate a state substantive law (or a state procedural law enacted for substantive purposes)." *Id.* at 1444 (plurality opinion). The rule articulated by the concurring opinion yields the same result.[3] Thus, even if the DJA were merely a judicially promulgated rule, it would control because it "'really regulate[s] procedure.'" *Id.* at 1442 (plurality opinion) (quoting *Sibbach* v. *Wilson & Co.*, 312 U.S. 1, 14 (1941)). The Second Circuit could hardly disagree—it emphasized that the DJA "is 'procedural *only*.'" Pet. App. 27a (emphasis added) (quoting *Skelly*, 339 U.S. at 671). But that court nonetheless made precisely the same error that required reversal in *Shady Grove*—elevating putative state preferences over federal procedure. Reversal is likewise warranted here.

2. *Federal Courts Reject the Second Circuit's Approach in Analogous Contexts*

The judgment below conflicts not only with this Court's precedents, but also with every other federal decision on point (with the exception of one abrogated case from 1960). For at least 50 years, federal courts uniformly have granted declaratory relief in the face of state-law prohibitions. As the Fourth Circuit explained, "[f]ederal standards guide the inquiry as to the propriety of declaratory relief in federal courts, even when the case

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[3] Concurring in the result, Justice Stevens made it clear that "[t]he mere possibility that a federal rule would alter a state-created right is not sufficient" to render the federal rule inoperative; instead, "*[t]here must be little doubt.*" 130 S. Ct. at 1457 (Stevens, J., concurring in part and in the judgment) (emphasis added). If a New York statute *expressly barring* a class action fails that test, a New York statute that, like the Recognition Act, is *silent* about declaratory relief certainly cannot pass it either.

is under the court's diversity jurisdiction." *White* v. *Nat'l Union Fire Ins. Co.*, 913 F.2d 165, 167 (4th Cir. 1990).

For example, in *Horace Mann Insurance Co.* v. *Johnson*, 953 F.2d 575 (10th Cir. 1991), the district court (like the Second Circuit here) asserted that it could not entertain a declaratory action because "the public policy of Oklahoma 'manifestly expressed' in Oklahoma's declaratory judgment statute militated against doing so." *Id.* at 576. The Tenth Circuit reversed. Although state law barred declaratory actions "to construe coverage under liability insurance policies," *ibid.*, the Tenth Circuit recognized the supremacy of federal over state procedure and allowed the action to proceed, *id.* at 578-579. See also *Farmers Alliance Mut. Ins. Co.* v. *Jones*, 570 F.2d 1384, 1386 (10th Cir. 1978).

The Eleventh Circuit has reached the same result. See *Cincinnati Ins. Co.* v. *Holbrook*, 867 F.2d 1330 (11th Cir. 1989), abrogated on other grounds, see *Wilton*, 515 U.S. at 282. The court ruled that, even if Georgia law bans insurers from obtaining a declaration as to coverage until the insured's liability has been adjudicated, "invocation of the federal Declaratory Judgment Act is neither precluded nor controlled by Georgia's procedural law." *Id.* at 1332 (citation omitted). "The mere fact * * * that the doors of Georgia's courts are closed to Cincinnati unless and until [the underlying liability] has been determined, does not mean that the doors of the federal courts are automatically closed * * * where the requisites for diversity jurisdiction exist." *Id.* at 1333. District courts are in accord.[4]

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[4] See, *e.g.*, *Nationwide Mut. Ins. Co.* v. *Welker*, 792 F. Supp. 433, 439 (D. Md. 1992) ("[F]ederal law determines whether or not this Court may properly render a declaratory judgment in this case. That a state (procedural or substantive law) prohibits a declaratory judg-

Perhaps only the discredited case of *Allstate Insurance Co.* v. *Charneski*, 286 F.2d 238 (7th Cir. 1960)—not cited by the Second Circuit below—supports the result here. In that case, Wisconsin "public policy" held "that an insurance company may not bring a separate declaratory judgment action" where, as here, the issues could be resolved in a direct action. *Id.* at 240. Attempting to "accommodat[e] *** the basic state and federal policy goals," *id.* at 243, the Seventh Circuit treated Wisconsin's limitation as "substantive" and refused to allow federal courts to issue a declaration that would be unavailable in Wisconsin state courts, *id.* at 244.

Even if "arguable" when decided, *Charneski* and its foundations were "eroded by the later decision in *Hanna* v. *Plumer*," 380 U.S. 460 (1965). 10B Wright *et al.*, *supra*, § 2756, at 466. It is now widely deemed "unsound" because it erroneously "gives controlling effect to state law on the availability of a declaratory judgment." *Id.* § 2760, at 567. The Second Circuit itself recognized as much decades ago, noting *Charneski*'s "arguable" basis and the observation that *Hanna* had further undermined its foundation. See *Beacon Constr. Co.* v. *Matco Elec. Co.*, 521 F.2d 392, 398 (2d Cir. 1975). But the decision below revives *Charneski*'s outdated analysis.

3. *The Second Circuit's Reasoning Could Be Invoked To Preclude Virtually Any Declaratory Judgment Action in Diversity*

Stripped of its exotic provenance, this case is not materially distinct from the run-of-the-mine declaratory ac-

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ment action within the state courts is simply inapposite.") (quotation marks omitted); *Icarom, PLC* v. *Howard Cnty.*, 904 F. Supp. 454, 458 (D. Md. 1995); *N.E. Ins. Co.* v. *N. Brokerage Co.*, 780 F. Supp. 318, 320 (D. Md. 1991); *Monticello Ins. Co.* v. *Patriot Sec., Inc.*, 926 F. Supp. 97, 100-101 (E.D. Tex. 1996).

tion. See, *e.g.*, *Aetna*, 300 U.S. at 239, 243-244 (declaratory suit appropriate where insurer claims no obligation to indemnify insured for damages to third party who has not yet sued). Indeed, it is all but indistinguishable from the typical insurer suit seeking a declaration of nonliability:

Insurance Dispute	*This Dispute*
Party A has an insurance contract with an insurer, Party B.	Party A has an Ecuadorian money judgment against Party B.
Party A claims that state law makes Party B responsible for expenses under the contract.	Party A claims that state law makes Party B responsible for payment of the foreign judgment.
Party A does not bring suit, but the threat of liability to Party B remains, along with risk to assets and other business opportunities.	Party A does not bring suit, but the threat of liability to Party B remains, along with risk to assets and other business opportunities.
Party B accordingly may bring a declaratory judgment action in federal court if diversity exists.	Party B accordingly may bring a declaratory judgment action in federal court if diversity exists.

That demonstrates precisely why the Second Circuit's reasoning is so pernicious—it could be used to justify barring virtually any DJA action in diversity.

The Second Circuit reasoned that the state Recognition Act was "motivated by an interest to *provide for* the enforcement of foreign judgments, not to prevent them." Pet. App. 19a. But the Recognition Act says nothing at

all about declaratory actions—and the Second Circuit cites no New York case expressing an opposition to actions under New York's own declaratory judgment statute, N.Y. C.P.L.R. 3001, in this context. As a result, the same "structur[al]" observation could be made for virtually *any* state-law cause of action. Pet. App. 17a. Almost any right—statutory or common law, federal or state—could be described that way. One could just as easily urge that the common-law action for breach of contract is "motivated by an interest to *provide for* the enforcement of" contracts, not to avoid them; or that the Patent Act is motivated by an interest in providing for the enforcement of property rights, not preventing them; or that the antitrust laws provide for suits to prevent illegal combinations, not to protect them. But the DJA nonetheless is available in each of those contexts. See pp. 8-9, *supra*; *Walker Process Equip., Inc.* v. *Food Mach. & Chem. Corp.*, 382 U.S. 172, 176 (1965) ("one need not await the filing of a threatened suit by the patentee; the validity of the patent may be tested under the Declaratory Judgment Act"); *Beacon Theatres, Inc.* v. *Westover*, 359 U.S. 500, 502-503, 509 (1959) (allowing declaratory judgment in an antitrust case). Indeed, the Second Circuit points to no substantive statute which *is* "motivated" to "prevent" vindication of the rights it creates,[5] Pet. App. 19a, or which *does* "create an affirmative cause of action" to declare non-liability or non-enforceability, *id.* at 17a. After all, that is the point of having a DJA procedure—to provide a means for obtaining a declaration of rights that might otherwise be unavailable.

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[5] But if any do, then the Recognition Act does as well. It expressly confers rights on foreign defendants like Chevron, including immunity from enforcement of certain corrupt foreign judgments. See N.Y. C.P.L.R. 5304(a).

C. The Second Circuit's Practical Concerns Are Amply Addressed by District Court Discretion

"Since its inception, the Declaratory Judgment Act has been understood to confer on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants." *Wilton*, 515 U.S. at 286. District courts may weigh the "equitable, prudential, and policy arguments" regarding whether to entertain declaratory actions. *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U.S. 118, 136 (2007).[6] It is the district court's duty "to strike a proper balance between the needs of the plaintiff and the consequences of giving the desired relief." 10B Wright *et al.*, *supra*, § 2759, at 542. As this Court has explained, district court decisions exercising their powers under the DJA are subject to deferential rather than de novo review "because facts bearing on the usefulness of the declaratory judgment remedy, and the fitness of the case for resolution, are peculiarly within their grasp." *Wilton*, 515 U.S. at 289. That discretion made it unnecessary for the Second Circuit to establish a categorical rule banning a whole class of otherwise ripe controversies from federal court.

The Second Circuit expressed concern that declaratory suits based on the Recognition Act "would turn [the Recognition Act's] framework on its head and render a law designed to facilitate 'generous' judgment enforcement into a regime by which such enforcement could be

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[6] The discretion is so broad that, even if other forms of relief are prohibited (such as injunctions against pending state prosecutions), district courts have discretion to entertain declaratory actions, although that discretion ordinarily should be exercised to avoid interference. See, *e.g.*, *Samuels* v. *Mackell*, 401 U.S. 66, 70-71 (1971). In *Wilton* itself, the declaratory action was filed after a related state suit—but that does not invariably require dismissal either. See *Wilton*, 515 U.S. at 279-280.

preemptively avoided." Pet. App. 20a. It also fretted about comity-based concerns, see *id.* at 22a-26a, fearing that New York courts will become international appellate tribunals, see *id.* at 25a (accusing the district court of "set[ting] itself up as the definitive international arbiter of the fairness and integrity of the world's legal systems"). The Second Circuit concluded: "New York undertook to act as a responsible participant in an international system of justice—not to set up its courts as a transnational arbiter to dictate to the entire world which judgments are entitled to respect and which countries' courts are to be treated as international pariahs." *Id.* at 22a.

But Judge Kaplan amply explained his reasons for exercising authority in this case. His case-specific exercise of discretion here sets no precedent for any other claim under the Recognition Act. New claims will be evaluated anew in light of their unique records. And abusive attempts to invoke declaratory jurisdiction are *always* subject to the district court's discretionary dismissal. Those courts may properly consider the comity issues when choosing whether to exercise declaratory jurisdiction, as the district court did here. See, *e.g.*, Pet. App. 119a ("the Court is far from eager to pass even a provisional judgment as to the fairness of the judicial system of another country"); *id.* at 35a n.5 (the court "solicit[ed] the views of the U.S. Department of State," which "politely declined to express any view"). And if any court ever *did* try to become a "transnational arbiter to dictate to the entire world," *id.* at 22a, the Second Circuit would find a *true* abuse of discretion. But categorically slamming the

door on *all* cases to forestall that phantom menace is overkill.[7]

In any event, the "generous" enforcement of foreign judgments, which the court below found to be the principal motivation of the Recognition Act, see Pet. App. 16a, 20a, would be no less "generous" in the declaratory context. Nothing supports the Second Circuit's worry that allowing district courts discretion to hear appropriate actions would actually transform the "regime" into one in which "such enforcement could be preemptively avoided," *id.* at 20a, except in the same way that any *other* liability may be "preemptively avoided" through proper declaratory actions. That is precisely what the DJA permits, and it is not for the Second Circuit to disapprove it.

CONCLUSION

The petition should be granted. The Court should summarily reverse, or set the case for plenary review.

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[7] The sole case the Second Circuit invoked (Pet. App. 27a, 30a) to support its categorical ban, *Basic* v. *Fitzroy Engineering, Ltd.*, 949 F. Supp. 1333 (N.D. Ill. 1996), demonstrates that district court discretion renders that across-the-board rule unnecessary. *Basic* involved a suit where declaratory relief was plainly improper. Its lead holding was that there was no subject-matter jurisdiction because there was no foreign judgment to declare unenforceable. *Id.* at 1337-1338. As a fallback, the court ruled that, "[e]ven if" it had jurisdiction, it would exercise its discretion to decline it. *Id.* at 1338. *Basic* nowhere said, as the Second Circuit seemed to believe, Pet. App. 30a, that no court, under any circumstances, could ever entertain a proper declaratory action seeking to forestall enforcement of a foreign judgment. Creating such a rule does not "agree with the court in *Basic*," *ibid.*, but rather departs from *Basic* and its effort to tailor the remedy's availability to the precise facts of the case.

Respectfully submitted.

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