



# Supreme Court to Address State Court Jurisdiction over Federal Securities Lawsuits

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This term the Supreme Court will hear oral arguments in *Cyan, Inc. v. Beaver County Employees Retirement Fund*, a case that may “shift the jurisdictional landscape for securities class actions.” The case will likely resolve a question that has divided the federal courts for two decades: whether the Securities Litigation Uniform Standards Act of 1998 (SLUSA) strips state courts of jurisdiction over certain class actions that solely involve claims under the Securities Act of 1933 (the 1933 Act). A decision rendered by the Court could strip state courts of jurisdiction over 1933 Act claims, or, alternatively, hold that state courts have concurrent jurisdiction with federal courts over such claims. This Sidebar discusses the legal issues involved in *Cyan* and the implications of the Court’s decision for securities litigation generally.

## *The 1933 Act, the PSLRA, and SLUSA*

Securities are regulated under both state and federal law. For much of American history, state governments possessed primary authority to regulate securities. After the October 1929 stock market crash and ensuing financial crisis, however, the federal government assumed increased responsibility over securities regulation, as Congress enacted a number of President Roosevelt’s New Deal reform proposals. The 1933 Act—the first major federal enactment regulating the sale of securities—“primarily concern[s]” new offerings of securities. Among other things, the Act imposes certain registration and disclosure requirements on companies that issue new offerings, and provides a cause of action against an issuer and certain other persons if documents associated with new offerings of securities contain untrue or misleading statements or omissions of material fact.

The 1933 Act’s jurisdictional provision contained two rules that have been modified by subsequent legislation. First, as originally enacted, the 1933 Act provided that state courts had concurrent jurisdiction with federal courts to hear lawsuits to enforce the Act’s provisions. Second, the Act prohibited defendants from removing such lawsuits from state court to federal court.

Over six decades after the enactment of the 1933 Act, Congress became concerned about the possibility that class action lawsuits, and securities class actions in particular, were “injur[ing] the entire U.S. economy.” In 1995, Congress enacted the Private Securities Litigation Reform Act (PSLRA) “to combat perceived abuses in securities litigation.” The PSLRA imposes certain defendant-friendly requirements for large securities class actions. These protections address *federal* securities claims, and most apply only

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in *federal* court. After the PSLRA's enactment, securities plaintiffs increasingly “[began bringing class actions under state \[securities\] law, often in state court](#)” to avoid the PSLRA's requirements.

Three years later, in order to combat this “[shift from Federal to State courts](#)” and “[prevent certain State private securities class action\[s\] . . . from being used to frustrate the objectives](#)” of the PSLRA, Congress enacted SLUSA. As relevant in *Cyan*, SLUSA contained amendments to the 1933 Act related to (1) the *preclusion* of certain state-law securities claims alleging conduct also prohibited by the 1933 Act, (2) the *removal* of certain claims from state to federal court, and (3) state court *jurisdiction* over 1933 Act claims.

Specifically, SLUSA's *preclusion provision* provides that certain large class actions alleging conduct that is prohibited by the 1933 Act may not be brought under *state* law in either state or federal court. SLUSA's *removal provision* allows defendants to remove claims alleging conduct that is prohibited by the 1933 Act from state to federal court for adjudication of a motion to dismiss.

Finally, SLUSA's *jurisdictional provision* amended the 1933 Act's general jurisdictional provision, which originally provided state courts with concurrent jurisdiction over 1933 Act claims. SLUSA amended that provision to provide for concurrent jurisdiction over such claims “except as provided in section [16] . . . with respect to covered class actions.” [Section 16](#) of SLUSA—the provision referenced by this amendment—includes a definition of “covered class action” for purposes of the SLUSA, but contains no explicit limitations on the jurisdiction of state courts.

Accordingly, under SLUSA, plaintiffs may not bring state-law actions alleging conduct that is also prohibited by the 1933 Act, and defendants may remove such actions from state to federal court for adjudication of motions to dismiss. But federal courts are [divided](#) as to whether state courts retain jurisdiction over 1933 Act claims, and whether such claims may be removed from state to federal court.

### *Issues Presented in Cyan*

The central question in *Cyan* is whether SLUSA divests state courts of jurisdiction over 1933 Act claims in “covered class actions” (certain suits seeking damages on behalf of more than 50 plaintiffs).

The petitioners in *Cyan* are a hardware and software supplier and associated individuals defending 1933 Act claims brought in California state court. They [argue](#) that SLUSA's amendment to the 1933 Act's jurisdictional provision strips state courts of jurisdiction over 1933 Act claims in “covered class actions.” By contrast, the [respondents](#) (plaintiffs in the California state court litigation) and the [U.S. Office of the Solicitor General](#) (OSG) as amicus argue that because Section 16 of SLUSA contains no explicit limitations on state court jurisdiction over 1933 Act claims, SLUSA does not strip state courts of jurisdiction over those claims. That is, the respondents and the OSG argue that because SLUSA's jurisdictional amendment indicates that Section 16 “provide[s]” any “except[ions]” to the 1933 Act's general rule of concurrent state court jurisdiction, and Section 16 does not in fact contain any such exceptions, state courts retain jurisdiction over 1933 Act claims post-SLUSA.

*Cyan* also offers the Court an opportunity to clarify the scope of SLUSA's removal provisions, though it is unclear whether the Court will take up that issue. Although the defendants have not sought removal of this litigation to federal court before the Supreme Court agreed to review the case, the OSG has [asked](#) the Court to “provide helpful guidance to lower courts” concerning defendants' ability to remove 1933 Act claims from state court to federal court. The respondents [contend](#) that SLUSA allows for the removal only of claims *brought under state law* concerning conduct that is also prohibited by the 1933 Act. The OSG, by contrast, [reads](#) SLUSA as allowing defendants to remove such claims *and* 1933 Act claims from state court to federal court.

### *Implications of the Court's Decision*

The Court's decision in *Cyan* may have important implications for securities litigation. Some observers have contended that companies defending securities fraud lawsuits [generally prefer](#) to [litigate](#) in a federal forum, where they enjoy the protections of the PSLRA. Indeed, the PSLRA arguably affords companies significant economic benefits. For example, a study submitted to the Court via an amicus brief found that [25 percent](#) of class actions based on Section 11 of the 1933 Act brought in federal court between 2011 and 2016 were involuntarily dismissed, while [six percent](#) of 1933 Act suits brought in California courts (where the *Cyan* litigation was brought) during that period were involuntarily dismissed, and the median settlement value in securities class actions was [92 percent higher](#) in California courts than federal courts during that period. Moreover, the PSLRA [automatically stays](#) discovery pending adjudication of a motion to dismiss. Accordingly, defendants litigating in federal court can generally avoid expensive discovery costs during the early stages of litigation.

Even if the Court does not hold that SLUSA strips state courts of jurisdiction over 1933 Act claims, it may address the scope of SLUSA's removal provisions. Indeed, many securities fraud defendants would likely welcome a holding that 1933 Act claims brought in state court are removable to federal court. Accordingly, even if respondents prevail on the jurisdictional question, the Court may offer securities fraud defendants another means of obtaining the PSLRA's protections in 1933 Act cases.

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