No. 21-1311

In the Supreme Court of the United States

Supreme Court, U.S.
FILED
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Rinaldo B. Pierno, *et al.*,
Petitioner,

v.

Fidelity Brokerage Services L.L.C.
Respondents.

On Petition For a Writ Of Certiorari
To The United States Court of Appeals
For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In the year 2000, Judge Richard S. Arnold in the Eighth Circuit noticed something was not quite right in the United States federal appellate courts. An aberration in the Anglo-American judicial tradition of precedent occurred. A judicial mutation referred to as "non-precedential" dispositions began to appear and populate the federal appellate courts to the extent that twenty-two years after Judge Arnold noticed and called out the anomaly in *Anastasoff v. United States,*[1] approximately eighty percent of all appellate decisions throughout the appellate circuits are deemed "non-precedential." Judge in that year, authored an opinion in *Anastasoff* in which he declared "non-precedential" decisions to be unconstitutional under Article III of the Constitution of the United States "...because it purports to confer on the federal courts a power that goes beyond the judicial."[2] That decision was declared moot upon a technicality. Judge Arnold's contention in his opinion has not yet come before the Supreme Court. However, in the last twenty-two years that have passed, Judge Arnold's prophetic vision seems to have been on point, because the constitutional conundrum of the legitimacy of non-precedential dispositions has created a chaos of contradictions in the federal appellate circuits that has affected courts, members of the bar, and ultimately litigants.[3]

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[1] *Anastasoff v. United States,* 223 F.3d 898, 899, (Eighth Cir. 2000), vacated as moot, 235 F.3d 1054 (Eighth Cir. 2000) (*en banc*).

[2] *Anastasoff v. United States,* id.

[3] Ahmed Bahgat, *The Shockingly Common Use of Non-Precedential Opinions in Sixth Circuit Taser Litigation,* ABA (2019). Available at: https://www.americanbar.org/groups/litigation/committees/civil-rights/articles/2019/shockingly-common-use-of-non-precedential-opinions-in-sixth-circuit-taser-litigation/ ; see also, Sarah E. Ricks, *The*

In the present petition before the Court, the litigation of this aberration and the contradictions it has caused needs urgent attention in the United States Supreme Court, *Rinaldo Pierno, et al. v. Fidelity Brokerage Services LLC,*[4] plaintiff/appellant Rinaldo Pierno, challenged the Second Circuit's summary order designation of "non-precedential" as unconstitutional and a violation of due process, and filed a motion to convert the summary order into a published opinion of citable precedent[5] referencing *Anastasoff v. United States* (non-precedential opinions unconstitutional) and *SEC v. Monterosso*, F56 f3d 1326, 1329 (11t Cir. 2014) (granting SEC's motion to publish a previously unpublished opinion). The Second Circuit denied Pierno's motion on March 3, 2022.

The dilemma of proliferating non-precedential dispositions and the contradictions they have caused in the federal appellate circuits requires the attention of the United States Supreme Court. This *Petition for Writ of Certiorari* places the constitutional issue of "non-precedential"" dispositions squarely before this Court.

An instructive sampling of the dissonance in the federal circuit courts over non-precedential dispositions are the following. In 1972, a Fourth Circuit decision in Jones v. Superintendent, declared " ...any decision by definition is precedent, and ...we cannot deny litigants and the bar the right to urge upon us what we have previously

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Perils of Unpublished Non-Precedential Federal Appellate Opinions: A Case Study of Substantive Due Process State-Created Danger Doctrine in One Circuit, Washinton Law Review, Vol. 81, Nov. 2 (2006), 217. Available at: https://digitalcommons.law.uw.edu/wlr/vol81/iss2/2/.

[4] *Rinaldo B. Pierno v. Fidelity Brokerage Services LLC*, No. 20-3711 (2022).

[5] Citable precedent defined as: cases may be cited, but the weight given to the case is left open to the court.

done."[6] In 2000, Judge Arnold participating in an Eighth Circuit panel authored the *Anastasoff v. United States* opinion that held Article III of the U.S. Constitution prohibits non-precedential decisions.[7] The following year, the Ninth Circuit in *Hart v. Massanari*, 266 F.3d 1155 (9th Cir. 2001) authored by Judge Kozinski, refuted *Anastasoff*'s interpretation of precedent at common law, its interpretation of the limits contained in Article III, and its "rigid conception of precedent, namely that all judicial decisions necessarily served as binding authority on later courts."[8] Thus, there exits four conflicting opinions between the Fourth, Eighth, Ninth, and Second Circuits on the subject of the constitutional legitimacy of non-precedential decisions that begs clarifications by this Supreme Court.

What has been overlooked in this debate and what Pierno attempted to suggest in his motion to convert the non-precedential summary order in his litigation before the Second Circuit is that precedent does not necessarily require *binding precedent*, rather the concept of precedent contains a *spectrum of values* from *binding precedent* to *citable precedent*.[9] The Appellant's *Petition* suggests that based on the empirical evidence of academic scholars, judges, members of the bar and litigants referenced in the

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[6] *Jones v. Superintendent*, 465 F 2d 1091 (4th Cir. 1972).

[7] Melissa H. Weresh, *The Unpublished, Non-Precedential Decision: An Uncomfortable Legality?* 3J. Appellate Practice and Process 175 (2001), 190. Available at: https://lawrepository.ualr.edu/appellatepracticeprocess/vol3/iss1/1, quoting *Anastasoff v. United States*, 223 F. 3D 898, vacated as moot, 235 F. 3D 1054 (8th Cir. 2000), id., 899.

[8] *Hart v. Massanari*, 266 F.3d 1161--63 (9th Cir. 2001), quoted from Shenoa L. Payne, *The Ethical Conundrums of Unpublished Opinions*, Willamette Law Review 44, 731.

[9] Payne, id., 732—733.

authorities section of this *Petition*, that the time perhaps has come, twenty-two years after the *Anastasoff* opinion, to return precedential status to all opinions, although not necessarily that of *binding precedent*.

Critics have also questioned the ability and the authority of the courts to determine which cases have precedential value. As a practical matter, the concept of precedential value is a fluid concept—what may not have precedential value on a given day may seem of great significance in the light of developments in the law. Consequently, the rationale underlying precedential value is critically flawed. The dissonance of opinions regarding the constitutional validity of "non-precedential" summary order dispositions among the federal appellate circuit courts and the contradictions caused by these dispositions is unresolved and as a practical matter, clarification by the Supreme Court is warranted.

The Questions presented are:

1. Whether the Second Circuit's "non-precedential" summary order disposition in *Rinaldo Pierno et al. v. Fidelity Brokerage Services LLC* (2022) by not assigning a precedential value from the Anglo-American tradition of the hierarchical layers of precedential values, is unconstitutional?

2. Whether the Second Circuit was arbitrary and made a decision not in accordance with the Anglo-American tradition of common law precedent, in denying Pierno's motion to convert and publish the appellate panel's summary order to *citable* precedent?

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Julius Cohen, *Joint Hearings before the Subcommittees of the Committees on the Judiciary Congress of the United States: Sixty-Eighth Congress, First Session on S. 1005 and H.R. 646* (January 9, 1924).

PETITION FOR A WRIT OF CERTIORARI

Rinaldo B. Pierno respectfully petitions for writ certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The judgment of the court of appeals was entered on December 16, 2021. A timely petition for rehearing *en banc* was denied on February 4, 2022. Appellant's motion to convert summary order to citable precedent was denied on March 3, 2022.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

STATUTORY PROVISIONS INVOLVED

Securities Act of 1933
Securities and Exchange Act 1934
Federal Arbitration Act; 9 U.S. Code
Fifth Amendment
Seventh Amendment
Tenth Amendment

STATEMENT

A. Factual Background

Rinaldo Pierno, et al. v. Fidelity Brokerage Services LLC began in district court as a securities case litigation under the Securities Act of 1933; the Securities and Exchange Act of 1934, and a Seventh and Tenth Amendment challenge to the Federal Arbitration Act (FAA) as it is ap-

plied in the State of New York. The securities dispute involved a trust account in which Pierno was a trustee. Pierno filed a lawsuit seeking a declaratory judgment from the district court regarding his discretionary powers under the trust document and demanded a jury trial. Fidelity motioned the court to displace the dispute to arbitration. What distinguishes this case from previous litigation challenging the Federal Arbitration Act (FAA) is that *Pierno* introduced and relied upon the congressional legislative history of the FAA and the testimony of Julius Cohen, sponsor and the attorney representing various chamber of commerce proponents of the Act along with persuasive authority to supplement his argument.[10]

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[10] Margaret L. Moses, *Statutory Misconstruction: How the Supreme Court Created a Federal Arbitration Law Never Enacted by Congress*, Florida State University Law Review, Vol. 34, Issue 1 (2006). Available at: https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1188&context=lr. Julius Cohen, *Joint Hearings before the Subcommittees of the Committees on the Judiciary Congress of the United States: Sixty-Eighth Congress, First Session on S. 1005 and H.R. 646* (January 9, 1924). Julius Cohen, an attorney representing the sponsors of the Federal Arbitration Act testified before a congressional committee during which he reassured the Congressional members that the passage of the FAA would not infringe upon the laws of New York State and was a procedural act not substantive law. *Pierno v. Fidelity* is distinctive in that, it introduced the legislative history of the FAA, in the argument put forward that challenged the FAA as substantive law. The fact that the Appellate panel's summary order chose to not to acknowledge or comment upon Cohen's testimony renders Julius Cohen's as an inconvenient ghost standing mute before the Second Circuit. The appellate panel's lack of acknowledgment of Cohen's testimony in its' summary order, is yet another reason in support of Appellant's motion for a reasoned decision of citable precedent. As critics have written, "When a judge makes no attempt to provide a satisfactory explanation of the result, neither the actual litigants nor subsequent readers of an opinion can know whether the judge paid careful attention to the case and decided the appeal according to the law or whether

At the appellate level, following the Second Circuit's non- precedential summary order, Rinaldo *Pierno, et al. v. Fidelity Brokerage Services LLC* includes a challenge to the Second Circuit's Internal Operating Procedure Rule 32.1.1. Summary Order dispositions, as to whether non-precedential dispositions in the appellate courts are unconstitutional under Article III (citing *Anastasoff v. United States*) and a violation of Fifth Amendment due process.

Many critics have suggested that in the light of the developments in legal research technology and the change to allow all published cases to be cited, the foundation for denying certain decisions precedential status is extremely weak. The contradictions that non-precedential summary orders in the federal appellate court have caused in both civil and criminal cases, perhaps suggests that a return to precedential status is warranted (although not necessarily *binding precedent*) to all opinions.

B. Procedural History

On June 26, 2007, the Second Circuit adopted and put into effect Local Rule 32.1 and Rule 32.1.1, Dispositions by Summary Order. The Court noted: "Rulings by Summary Order have no precedential effect." "Accordingly, in those cases in which a decision is unanimous and each judge of the panel believes no jurisdictional purpose would be served by an opinion (*i.e.*, a ruling having prece-

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the judge relied on impermissible factors." As Judge Kozinski has observed "...we would consider it bad form to ignore contrary authority by failing even to acknowledge its existence..." these words would suggest that the Second Circuit crossed into the boundary of "bad form" when it failed to acknowledge or comment upon the testimony of Julius Cohen.

dential effect), the ruling may be by summary order instead of by opinion." In recent years the Second Circuit has disposed of 60-70% of appeals by summary orders. Rule 32.1 has failed to resolve the critical issue of whether these decisions are precedent; it does not address that issue. What remains to be done, in the wake of Rule 32.1, Internal Operating Procedure Rule 32.1.1 Summary Order is to confront the issue of precedential status.

Courts have granted motions, however, to convert an unpublished opinion into binding precedent (see for example, *SEC v. Monterosso,* F 56 F3d 1326, 1329 (11th Cir, 2014) (granting *SEC*'s motion to publish a previously unpublished opinion); 5th Cir. R. 47.5.2; 7th Cir. Rule 32.1(c) (allowing "any person" to make the motion); 9th Cir. R.36-4.

The Appellant's motion dated February 8, 2022, to convert and publish as citable precedent the court's decision contained in the summary order was denied. Appellant Pierno argued the Second Circuit's non-precedential summary order of December 16, 2021, was unconstitutional on the basis of Judge Arnold's decision regarding *Anastasoff v. United States*, 235 F.3rd 1054 (8th Cir. 2000) (*en banc*). Appellant also suggested that the court erred in stating that the case as presented in both the District and Appellate Courts *"no jurisdictional purpose would be served,"* and has *"no precedential value"* because as noted in Appellant's petition for Rehearing en banc (denied, Docket number 129) issues regarding the U.S. Constitution were presented with attached persuasive authorities which upheld Appellant's contentions regarding Appellant's Seventh Amendment right to trial by jury, the

Tenth Amendment, the "separation of powers" under the theory of federalism.[11]

Appellant Pierno also argued, and many critics would agree, that summary orders are inappropriate when issues of Constitutional dimension are placed before the Appellate Courts. In those cases, involving the U.S. Constitution, a reasoned published opinion of citable precedent ought to be required at a minimum, in the interests of justice, public interest, and a litigant's right to due process.[12]

REASONS FOR GRANTING THIS PETITION

I. Non-precedential decisions have caused chaotic contradiction in both criminal and civil litigation.

The chaos of contradictions that has resulted in allowing a place for non-precedential decisions in appellate courts appears to vindicate Judge Arnold's *Anastasoff* contentions, as has been pointed out, and noted in Ahmed Bahgat's empirical survey of the Sixth Circuit rulings regarding the Fourth Amendment and the use of tasers in law enforcement litigation.[13] The

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[11] Jean R Sternlight, *Mandatory Binding Arbitration and the Demise of the Seventh Amendment Right to a Jury Trial*, Scholarly Works (2001). Available at: https://scholars.law.unlv.edu/facpub/272/. Moses, id. Critics have suggested thirty-three years after *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477 (1989) in the light of the Savings and Loan bank fiasco, the wall street meltdown in 2008 and the Bernie Madoff swindle that perhaps the logic in the decision of *Wilko v. Swan*, 346 U.S. 427 ought to be reinstated in securities litigation.

[12] Citable precedent defined as: Cases may be cited, but the weight given to the case is left open to the court.

[13] Bahgat, id.

chaos caused by unpublished, non-precedential decisions has detrimentally affected both civil and criminal cases. Critics have suggested unpublished court decisions are no longer warranted, this is particularly true in our modern technological age of computer driven digital publication and storage.

Another criticism of non-precedential decisions is that it undermines the Appellate process. A litigant is denied the possibility of effective review by a higher court when the resolution of his or her case is termed "*no precedential effect*" and goes unpublished. If an opinion has been designated as having no precedential value, the Supreme Court is less likely to grant review of an issue that arguably has no impact on future litigants.[14] This unfortunate result may be viewed by critics as a form of *de facto* censorship.

"Publication is a signal to litigants and observers that the court has nothing to hide, that the quality of its work in a case is open for public inspection." Moreover, "written opinions encourage judges to produce well – reasoned, well – written decisions because they subject judges' conclusions to public scrutiny. This leads to better more consistent opinions because it holds judges accountable to the public which they serve.[15] In that article the author, Weresh concluded that the current appellate rules for summary disposition are certainly offensive to a perception of fairness and raise serious questions under Article III, the equal protection and due process clauses, and the statutory right to appellate review.[16]

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[14] Weresh, id., 182

[15] Id.

[16] Id., 176

Critics have also questioned the ability, and the authority, of the courts to determine which cases have precedential value. As a practical matter, the concept of precedential value is a fluid concept – – what may not have precedential value on a given day may seem great significance in the light of developments in the law. Consequently, the rationale underlying the precedential value is critically flawed.

In fact, the determination that a case does not raise a *new* issue does not necessarily diminish its importance. There is a value in accumulations of decisions in an area for many reasons: one, repeated affirmations create stability for attorneys by providing prior precedent, and two, additional applications of a legal principle help flesh out a precedent. Further a change in law may not arise as a result of a *new* issue, but because the same issue continues to arise. Since the doctrine of *stare decisis* is dependent upon availability of published opinions, the different publication rules coupled with the non-precedential value judgments undermine the development of the common law.[17] Consequently, the legality of non-precedential decisions merits consideration by the United States Supreme Court.

Non-precedential opinions transgress and are contrary to the traditional role of precedent plays in the Anglo-American legal system and often create conflicting opinions as pointed out by critics Judge Arnold, Ahmed Bahgat, and Sarah Ricks that warrants the attention of his Supreme Court.

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[17] Id., 186.

II. A dissonance exists between the Third, Sixth, Eighth, and Ninth Circuits as to whether non-precedential decisions are unconstitutional under Article III and violate due process.

A comparison of federal appellate circuit's "non-precedential" dispositions demonstrates that the risks of nonprecedential opinions are real. During the six-year interval between binding state-created danger decisions, the Third Circuit created inconsistent non-precedential opinions on the identical legal theory. Doctrinal divergence between the Third Circuit's binding and non-precedential opinions has undermined the predictive value of precedential state created danger decisions, created an obstacle to settlement at both the trial and appellate levels. In turn, District Court's unpredictable application of the non-precedential opinions has undermined the critical appellate functions of ensuring that like cases are treated alike, that judicial decisions are not arbitrary, and that legal issues resolved at the appellate level need not be re-litigated before the district courts.[18]

Yet another federal appellate circuit comparison may be found in the Sixth Circuit. Because the Sixth Circuit only decides about 10% of its docket in precedential opinions, most of these facts presented in Fourth Amendment Taser cases are analyzed in non-precedential opinions, and as a result, it is difficult to analyze Fourth Amendment excessive force facts without drawing analogies to facts in non-precedential opinions. In recent years, the Sixth Circuit itself has cited its own non-precedential authority in its precedential opinions. In the Sixth Circuit excessive force

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[18] Ricks, id.

cases concerning tasers, the overwhelming abundant and continued application of non-precedential opinions hinders the development of clear legal standards. As the lines between precedential and non-precedential opinions begin to blur, it becomes more difficult for litigants to decipher the meaning and persuasive value of non-precedential opinions. As long as the Sixth Circuit continues to blur the boundaries between precedent and non-precedential opinions, practitioners and district courts will face difficulties predicting the correct analysis of Fourth Amendment excessive force claims in the Sixth Circuit.[19]

Critical of non-precedential rulings, Judge Arnold, of the Eighth Circuit in the year 2000, authored an opinion in *Anastasoff v. United States. Anastasoff* held that the Eighth Circuit rule declaring unpublished opinions as not precedent was unconstitutional under Article III "*because it purports to confer on the federal courts a power that goes beyond the judicial.*" Citing *Marbury v. Madison*, the court determined that every judicial decision is, or should be, *"a declaration and interpretation of a general principle or rule of law."* According to the *Anastasoff* panel, this "declaration of law" must be applied in all subsequent cases to parties who are similarly situated. Those principles of precedent, it continued, were *"well-established and well-regarded at the time this nation was founded."* Determining that our legal system was based on a requirement of precedent, it concluded that *"insofar as the [Eighth Circuit rule regarding unpublished opinions] would allow us to avoid the precedential effect of our prior decisions," it is unconstitutional.*

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[19] Bahgat, id.

Anastasoff countered the contention that courts do not have enough time to treat every decision as precedent by responding, *"[if]this is true, the judicial system is indeed in serious trouble, but the remedy is not to create an underground body of law good for one place and time only."* Most importantly, *Anastasoff* stated that the rule at issue expanded the power beyond what Article III gave to the courts by giving them the power *"to choose for themselves, from among all the cases they decide, those that they will follow in the future, and those that they need not."* The court felt that those courts are saying to the bar: "*We may have decided this question the opposite way yesterday, but this does not bind us today, and, what's more, you cannot even tell us what we did yesterday.*[20]

The Fourth Circuit posited a similar argument in *Jones v. Superintendent* (1972) to *Anastasoff by* declaring ".... Any decision is, by definition, a precedent, and... we cannot deny litigants and the bar the right to urge upon us what we have previously done."

To be specific, a decision with presidential effect, warranting publication, generally does one or more of the following:[21]

a) establishes a new rule of law.

b) alters, modifies, clarifies, or explains an existing rule of law.

c) contains a reasoned criticism or questioning of existing law.

d) resolves or identifies an apparent conflict of authority, either within the circuit or between the circuit and

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[20] Payne, id.

[21] Weresh, id.

another or create a conflict between the circuit and another.

e) draws attention to a rule of law that appears to have been generally overlooked.

f) applies an existing rule of law in a novel factual context, differing materially from those in previously published opinions of the court applying the rule.

g) contributes significantly to the legal literature by reviewing the legislative, judicial, administrative, or electoral history of an existing rule of law.

h) interprets a rule of state law in a way conflicting with state or federal precedent interpreting the state rule.

i) is a case of first impression in the court regarding the substantial issue it resolves.

j) concerns an issue of substantial or continuing public interest or importance; or

k) will otherwise serve as a significant guide to the bench, bar or future litigants.

Appellant Pierno suggested as an alternative to the Second Circuit's summary order in justification for his motion to convert and publish the decision of the court' summary order, that his judicial briefs, particularly the Appellant's *Petition for Rehearing en banc* (docket number 129) met several of the above metrics within the above-mentioned guidelines, and consequently, warranted an opinion of *citable* precedent.

Citable precedent was chosen among the five interconnected levels of precedent.[22] At the top tier exists *binding precedent*, which means that the court's holding must be followed "by courts at the same level and

[22] Payne, id., 732-733

lower within a pyramidal judicial hierarchy. Just below binding precedent exists *overrulable precedent*, which is defined as a holding that is ordinarily followed under the doctrine of *stare decisis*, "but may be overruled if sufficient reasons present themselves." Typically, decisions in this tier originate in the same court.

Third tier cases merely carry *precedential value*. Although a slightly vague concept, some courts allow unpublished opinions to be cited for their "precedential value" or as "precedent." Depending on the circuit's local rule, this term contains a spectrum of precedential value from binding precedent to mere citable president. The fourth tier contains cases with only *persuasive value*, meaning they have "persuasive force independent of any precedential claim." Without any regard to *stare decisis* or the opinions status as precedent, the decisions must be able to persuade on their own argumentative merits. This level of precedent most often occurs when an attorney cites to an opinion from another circuit or jurisdiction as an example of a line of reasoning, which his or her circuit may or may not be persuaded to adopt.

Finally, a fifth set of cases have *citable precedent*, meaning only that the cases may be cited, but that the weight given to the case is left open to the court. Although not necessarily clear how this fifth tier differentiates from the fourth, there is merit to the differentiation when discussing unpublished opinions, as the ability to cite is at the heart of the issue. Since many argue that unpublished opinions do not carry even persuasive value, there appears to be a need for some tier that allows for a value in existence below "persuasive"

where the ability to bring the case to the attention of the court is the only value the opinion is given.

The precedential tiers may reflect not only how courts treat opinions, but also where the issuing court resides, what level of care existed in issuing the opinion, and how receptive the receiving court may be toward non- authoritative precedent. The eliminating the meta-category of non-precedential decisions with the substitution category of citable precedent is a viable solution addressing the dissonance between *Anastasoff* and *Hart* opinions.

Declaring decisions to be "non-precedential" has been contrary to the entire history of the common law system. This removal of decisions from the body of common law was a fundamental shift in the common law system that was truly unprecedented.[23] Over eighty percent of all federal decisions are now designated non-precedential. For the first time in common-law history, rules limiting the citation of opinions whether implicitly or explicitly then came to deny precedential status to these opinions. However, the 20th century also brought with it the technological innovation that allows for better management of and access to an ever-increasing body of law. Moreover, lawyers' and judges' attitude toward these allegedly unimportant opinions suggest that they are anything but unimportant.[24]

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[23] David R. Cleveland, *Overturning the Last Stone: The Final Step in Returning Precedential Status to All Opinions*, Journal of Appellate Practice, Vol. 10, Issue 1 (2009). Available at: https://lawrepository.ualr.edu/appellatepracticeprocess/vol10/iss1/5/.

[24] Cleveland, id., 82.

III. The questions presented are exceptionally important, are in the public interest, and warrant review in this case.

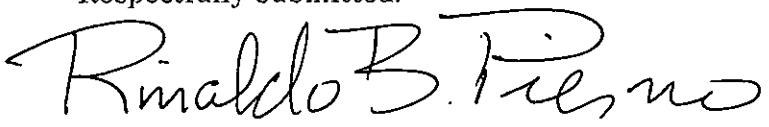
Non-precedential opinions transgress and are contrary to the traditional role of precedent plays in the Anglo-American legal system and often create conflicting opinions as pointed out by critics Judge Arnold, Ahmed Bahgat and Sarah Ricks.

Rinaldo Pierno, et al. v. Fidelity Brokerage Services LLC offers this Court an opportunity to settle and correct the chaotic contradictions that non-precedential summary order dispositions have caused in the appellate courts, to members of the bar, and ultimately to litigants. The questions presented are also relevant to many more cases outside this securities litigation context. As a practical matter, this Court's review is warranted.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.



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