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IN THE

SUPREME COURT OF THE UNITED STATES

Betsy Sachs

— PETITIONER

(Your Name)

vs.

FINRA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FIRST CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Betsy Sachs

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WRIT OF CERTIORARI

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Draft

Sat, Jan 28, 2023 at 10:16 PM

No.

IN THE SUPREME COURT OF THE UNITED STATES

Betsy Sachs, Petitioner

vs

Finra, Respondent

OF APPEALS

ON PETITION FOR A WRIT OF CERTIORARI TO FIRST CIRCUIT COURT

PETITION FOR WRIT OF CERTIORARI

Betsy Sachs

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QUESTIONS

1. DOES FINRA HAVE IMMUNITY?

2. DOES THE REGULATION OF US SECURITIES PROFESSIONALS REMAIN A PRIVATE ENTERPRISE
FREE FROM THE CONSTITUTIONAL CONSTRAINTS ON PUBLIC ACTORS?

3. SHOULD FINRA BE REQUIRED TO DEMONSTRATE EXCEPTIONALLY CLEAR DELEGATION OF AUTHORITY FROM CONGRESS WHEN IT SEEKS TO ADDRESS PROBLEMS IN WAYS THAT HAVE MAJOR ECONOMIC OR POLITICAL SIGNIFICANCE?
4. IS FINRA A QUASI GOVERNMENTAL ENTITY WITH PRIVATE/PUBLIC DISTINCTION?
5. SHOULD SCOTUS VOID SOME CRITICAL SRO RULE?
6. WILL SCOTUS EXTEND ITS EMERGING DOCTRINES TO INVALIDATE FINRA?
7. THE CENTRAL QUESTION BECOMES WHETHER FINRA IS EXERCISING EXECUTIVE POWER WITHIN THE MEANING OF THE CONSTITUTION OR WHETHER IT IS A TRULY PRIVATE SELF-REGULATORY ORGANIZATION.
8. SHOULD SCOTUS TAKE RENEWED INTEREST IN ITS PRIVATE NON DELEGATION DOCTRINE?
9. WHAT IS JUSTICE?

LIST OF PARTIES

Betsy Sachs, Petitioner

v

Finra, Respondent

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Appendix A, Court of Appeals Order: 11/15/2022 ORDER entered by William J. Kayatta, Jr., Appellate Judge; Ojetta Rogerie Thompson, Appellate Judge and Gustavo A. Gelpí, Jr., Appellate Judge: Pro se plaintiff-appellant Betsy Sachs's "petition for rehearing" is denied. See Fed. R. App. P. 40(a)

Appendix B (2). [22-1366] (AL) [Entered: 11/15/2022 10:07 AM] 11/17/2022 NOTICE of intent to file a petition for certiorari filed by Appellant Betsy Sachs. Served on 11/17/2022. [22-1366] (BS) [Entered: 11/17/2022 05:59 PM]

Appendix C, District Court 05/06/2022 TEXT ORDER: The Court has reviewed the plaintiffs Complaint, (ECF No. 1) entitled Motion to Vacate, pursuant to 28 U.S.C. 1915(e)(2)(B)(ii). The Complaint fails to state a claim for relief under federal law or Constitution. To meet the federal pleading standard, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). The plaintiffs Complaint fails to plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged and offers little more than a series of conclusory statements. Id. (citing Twombly, 550, U.S. at 556). The Complaint is DISMISSED and the Motion to proceed in forma pauperis (ECF No. 2) is DENIED pro forma.. So Ordered by District Judge Mary S. McElroy on 5/6/2022. (Potter, Carrie) (Entered: 05/06/2022) 05/06/2022 JUDGMENT entered in accordance with the Text Order of 5/6/2022. So Ordered by District Judge Mary S. McElroy on 5/6/2022. (Potter, Carrie) (Entered: 05/06/2022) 05/09/2022 NOTICE OF APPEAL by Betsy Sachs as to 7 Judgment

AUTHORITIES

1. Securities Act of 1933 15 USC 77 a et seq , 48 stat 74, has two basic objectives: requires that investors receive financial and other significant information concerning securities being offered for public sale and prohibits deceit, misrepresentations and other fraud in the sale of securities.
2. Securities Exchange Act of 1934, the law governing the secondary trading of securities in the US to provide for the regulation of security exchanges & over the counter market operations in interstate and foreign commerce and through the mails to prevent inequitable and unfair practices on such exchanges and regulates the participants involved to protect investors.
3. Securities Investor Protection Act 1970, SIPA, was intended to build public confidence in securities markets by covering customers for any broke responsible losses or failure.
4. The Truth in Securities Lending Act, Exchange Act rule 10c-1, to increase transparency and efficiency in the opaque securities lending market
5. Regulation 2(12 CFR 226) implements the Truth in Lending Act (TILA) , a consumer protection designed to promote the informal use of customer credit.
6. Paperwork Reduction Act 1980, 91-511 establishes a broad mandate for agencies to perform their information activities in an efficient, effective, economical manner, The act imposes procedural requirements on agencies that wish to collect information from the public.

7. *Bandimere v SEC*, 844 F. 3d 1168 (2016), held that Administrative Law Judges are inferior officers because they exercise significant discretion and so they must be appointed.
8. *Lucia v SEC* 595 was a decision by SCOTUS on the status of administrative law judges of the Securities Exchange Commission holding SEC commission judges are officers of the US subject to the Constitution's Appointments Clause.
9. Victims Rights Restitution Act, 34 USC 20 141 , describes the services the federal government is required to provide specifies a broad set of rights for victims of federal crimes and authorizes federal funding for programs to assist victims in asserting, accessing and enforcing those rights.
10. Violence Against Women's Act of 1994, provided \$1 billion toward investigation and violation of violent crimes against women. Pub 103-322, an act to prevent crime.
11. *Jones v Alfred H. Mayer Co.* 392 U.S. 409 (1968), held that Congress could regulate the sale of private property to prevent racial discrimination. Allows the federal government to ban private parties from engaging in discriminatory housing policies. The court ruled that the 13th Amendment did not bar racial discrimination by private individuals, only by government.
12. Supremacy Clause, Article VI Paragraph 2 of the US Constitution established that the federal Constitution and federal law generally take precedence over state laws, even state Constitutions and take priority over any conflicting rules of state law.
13. *Caputo v Wells Fargo Advisors LLC* No.20-3059 Oct 2022. Wells Fargo found that Caputo had traded certain clients' long-term investments for other long-term investments to the clients' detriment. Caputo was liable and ordered to pay Wells Fargo compensatory damages.
14. *Goldman v City of Reno* 747 F.d 733, Reno claimed Goldman's conduct breached its fiduciary duty & amounted to negligent misrepresentation. Legal battle belongs to federal court not arbitration.
15. *UBS v Carilion Clinic* No. 12-2066 4th Circuit, the court concluded that Carilion by purchasing UBS and Citi's services was indeed a customer entitled to Arbitration. Under Finra Rule 12200 a broker cannot avoid Arbitration with a customer.
16. *Goldman Sachs Group v Arkansas Teachers Retirement System* 20-222, a decision related to securities fraud class actions. The court held that a defendant in a securities class action has the burden of production and persuasion.
17. *Pivotal Software Inc. v Tran*, a case in which the court will decide whether Private Securities Litigation Reform Act discovery- stay provision applies to a private action under the Securities Act of 1933 or a federal court or solely to a private action in federal court. Does the Private Securities Litigation Reform Act discovery stay provision apply to a private action under the Securities Act of 1933 in a federal court or solely to a private action in federal court?
18. Section 18 of The Securities Exchange Act of 1934 imposes liability on any person that makes a materially false or misleading statement or omission in a doctrine filed with the SEC under the Exchange Act 15 U S C 78 r (a).
19. *Blum v Yaretsky* 457 U.S. 991 1025 ct 27777 (1982), rule, a state can be held responsible for a private action when it has exercised coercive power Private entity decisions are not converted to state action simply because the state reacts to the decision.

20. *Collins v Yellin*, deals with the structure of the Federal Housing Agency. The court held that the Federal Housing Finance Agency's structure violates the separation of powers. The structure of the Housing Economic recovery Act of 2008 which restricts the President's power to remove the Federal Housing Finance Agency Director violates separation of powers.

21. 1st Amendment. Protects freedom of speech, the press, assembly, and the right to petition the government for redress of grievances.

22. *McCulloch v Maryland*, SCOTUS ruled that Congress had implied powers under the Necessary and Proper Clause of Article 1 Section 8 of the Constitution. The court decided that the federal government had the right and power to set up a federal bank and that states did not have the power to tax the federal government.

23. Necessary and Proper Clause, Article 1 Section 8, clause 18, also known as the elastic clause, Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers. This provision is known as the Elastic Clause because it is used to expand the powers of Congress.

24. *Marbury v Madison* 5 US 137, established the principle of judicial review meaning that American courts have the power to strike down laws and statutes that they find violate the Constitution.

25. Nondelegation Doctrine, congress cannot delegate its legislative powers to other entities, typically Congress delegating its powers in Administrative agencies or private organizations.

26. *Shelly v Kraemer* 334 U.S. 1 (1998), although racially real estate covenants are not void, a court cannot enforce them because that would constitute state action under the 14th Amendment.

27. The 5th Amendment provides due process rights ensuring government authorities cannot take a person's right to life, liberty & property without proving a crime has been committed.

28. Privileges and Immunities Clause, no state shall make or enforce any law which shall abridge the privileges or immunities of the US nor shall any state deprive any person of life, liberty, or property nor deny to any person within its jurisdiction the equal protection of the laws.

29. The 7th Amendment ensures that citizens' civil cases can be heard and decided by a jury of their peers.

30. *Alpine Securities and Scottsdale Capital Advisors Corp*, application for review of Finra action suspending their membership.

31. *Baker v Carr*, 369 U.S. 186, the court held that established the right of federal courts to review redistricting issues which had previously been termed political questions outside the court's jurisdiction.

32. State Action Doctrine is a key component of the 14th Amendment, a threshold requirement that must be satisfied before triggering protection of our fundamental rights, but the doctrine seems to be curiously without purpose, a collection of arbitrary rules that impeded Constitutional protections of liberty, equality and fairness.

33. Nondelegation Doctrine is a principle in Administrative law that Congress cannot delegate its legislative powers to other entities. This prohibition typically involves Congress delegating its powers to administrative agencies or to private organizations.

34. Separation of Powers, doctrine of Constitutional law under which the three branches of government are kept separate, known as the system of checks and balances.

35. 14th Amendment provided all citizens with equal protection under laws & confirmed the rights and privileges of citizenship.

JURISDICTION

Appendix A, Court of Appeals Order: 11/15/2022 ¹¹ ORDER entered by William J. Kayatta, Jr., Appellate Judge; Ojetta Rogerie Thompson, Appellate Judge and Gustavo A. Gelpí, Jr., Appellate Judge: Pro se plaintiff-appellant Betsy Sachs's "petition for rehearing" is denied. See Fed. R. App. P. 40(a)

Appendix B (2). [22-1366] (AL) [Entered: 11/15/2022 10:07 AM] 11/17/2022 ¹¹ NOTICE of intent to file a petition for certiorari filed by Appellant Betsy Sachs. Served on 11/17/2022. [22-1366] (BS) [Entered: 11/17/2022 05:59 PM]

THE FACTS, STATEMENT OF THE CASE

The Court of Appeals decision is far departed from the accepted and usual course of judicial proceedings. SCOTUS must use its supervisory power because the Court of Appeals sanctioned such a departure by a lower court. A state court has decided an important federal question in a way that conflicts with other state courts. The Court of Appeals has settled an important federal question on first impression that should be settled by the Supreme Court. The court's analysis in this case must begin with the Constitution's text and end there as well. The District Court's decision was preposterous. There is no remedy for such political self-dealing. Provisions in state statutes and state Constitutions only supply guidance for state courts to apply. Courts should not defer to agency interpretations that concern vast economic and political significance. Finra can't be overruled by a state Administration under any circumstances. A company can be held liable for an employee's action to enrich himself. If Finra's laws are just rules they must be promulgated by an actual government agency subject to statutory and Constitutional limitations. Finra is a double delegation disaster. Certiorari can be issued even against Administrative authority affecting rights of individuals.

Hyperfocus is an intense form of mental concentration that focuses consciousness on a subject. Knowledge is a familiarity which is acquired through experience. The Autistic Self-Advocacy Network describes special interests as "narrow but deep." Petitioner has extensive knowledge beyond that expected by a lay person of how Finra operates. Finra's utter failure to protect consumers is good cause for removing from Finra its ability to regulate any market conduct. Petitioner is holding Finra accountable because she knows their secrets and how they operate. If Finra has no duty to protect you then their existence is to be used against you. Petitioner is a real victim of the subprime banking crisis and White Supremacist domestic terrorism. There must be a way to get a jury of peers to render a judgment in this dispute. Is it against the law to ruin somebody? Congress must examine this case. Never has there been such a complete failure of corporate controls and such a complete absence of trustworthy financial information and management practices as occurred here through use of software to conceal funds, the lack of governance, and how the registered representative apparently approved expenses with emojis. Unless you have analyzed all the data you will have no idea what actually occurred here.

This case demonstrates the awesome power of Finra to rip off consumers. These are sophisticated, premeditated crimes committed by highly educated individuals in absolute secrecy. In most cases, there will be no smoking guns and no cameras hidden in lamps to capture the moment. Effective strategies for fighting this corruption are needed but their successful deployment depends in a large part on how seriously the jurisdiction views the threat. Petitioner hopes this case has set the stage by making the case that hardcore Finra offenses deserve to be treated as crimes and that whenever possible authorities and prosecutors must work together to prosecute these harmful offenses. Finra has no subpoena power and at best has a spotty record for detecting fraud. A person cannot wear two hats and continue to adhere to his fiduciary duties. The characters of buyer and seller are inconsistent. An advisor should not attempt to wear two hats because we are unable to have our advice be affected by temptations such as for additional compensation that might

exist. The fundamental problem is that broker dealer firms advocate for the freedom to hold themselves as trusted advisors and to provide investment advice on important financial decisions yet these broker dealer firms still desire to remain in a sales-customer relationship instead of a fiduciary-client relationship, non fiduciaries who engage in conduct permissible in a workaday world for those acting at arm's length. The standard of conduct expected of the actors in arm's length relationships has been described as morals of the marketplace whereas the fiduciary steps into the shoes of the client. A fiduciary relationship necessarily involves vulnerability for the party reposing trust in another. Because of this the law creates a special status for fiduciaries by imposing duties of loyalty, care and full disclosure on them. Each member is required to act in good faith and in a manner to be in the best interests when discharging his duties. The present environment provides caveat emptor freedom to broker-dealers to please the firm financially with no disclosure of their financial incentives or the risks of the product. Consumers need to be on the lookout for broker dealers who provide advice. The economic self-interest of many brokerage firms and registered representatives often profoundly affect the recommendations made to clients. It is clear that brokers are able to place investors in investments that benefit the financial interests of the broker dealer and or its registered representatives. Finra has refused to recognize in its rules of conduct that brokers when in a relationship of trust and confidence with their clients possess broad fiduciary duties to such customers. Many forms of conduct permissible in a workaday world for those acting at arm's length are forbidden to those bound by fiduciary ties. Finra continues its abysmal failure to advance standards of its members and in so doing fails to safeguard consumer interests while favoring commercial interest in its own broker-dealer firms. Finra's utter failure to protect consumers is good cause for removing from Finra its ability to regulate any market conduct.

Moral injury can be an effective tool for turning the lense back on the system. Finra arbitrations are free for all where the law plays only a minor role in the outcome. Petitioner is astounded at the jackleg operation she sees here. She doesn't know why anyone would agree to have these people at Finra arbitrate anything. What happened here was only an opportunity to commit financial suicide. A new panel is necessary due to the original panel's rather flagrant disregard of settled law. Finra is not a state actor subject to Constitutional restrictions. The laws of the US trump conflicting state laws. Finra is unconstitutionally undermining the superior laws and institutions of the US. Sovereignty, political authority lies with the people not with the state. The law remains muddled and incoherent. Finra should remain responsive to public concerns.

Finra owed Petitioner a duty of care. Finra breached that duty of care. Petitioner suffered tremendous injuries. These injuries were the result of Finra's breach of duty. This complaint cites more than legal conclusions. Petitioner has successfully pleaded the elements of the causes of action. She has included every single fact that could in any way be relevant to give the court as big a picture as possible. Self-defense, entrapment, necessity, and Respondeat Superior are examples of affirmative defenses. Petitioner has met the burden of proof. Finra's conduct was unlawful. A party is liable for acts of its agents performed within the course of their employment. A detour still allows a judge to assess liability upon the employer as the employee's actions will not be considered so far beyond the scope of employment as to absolve the employer from liability without a factual assessment. Finra could still face the prospect of vicarious liability for negligent entrustment. Where an employer negligently permits an employee who is known to be reckless, or should have known with a basic amount of investigation that is reasonable for most employers to perform, the employer will be liable to those injured when the employee causes an accident even if an employee is on a frolic at the time. Failure to state a claim is an entirely inappropriate defense allowing the court to dismiss a Petitioner. Petitioner has sustained her initial burden of making a prima facie case for personal jurisdiction, and the defendants failed to satisfy their burden to rebut those allegations and are destroying credibility in the court. This is an issue that will need to be decided on the merits. This complaint gives rise to a legally cognizable claim for relief. Finra owed Petitioner a duty of care and was under contractual obligation to do so. Finra cannot be absolved of civil liability. Petitioner has presented sufficient legal facts. The claim is not frivolous and there is legal connection between the facts that took place. The claim states all claims against the defendants. The claims presented do sufficiently allege a claim for relief and the court will be reckless to dismiss her. Boilerplate defenses must be stricken. This is no small thing. The court must not streamline this case. What happened herein is beyond Petitioner's control and through no fault of her own. Petitioner will require a Registered Intermediary to facilitate avoiding uncertainty.

A negative right is a right not to be subjected to certain behaviors by our government or other individuals. How can a Petitioner defend her rights when there has been a violation of her moral sphere and personal dignity? From whom can a Petitioner claim her rights? Does anyone have a duty to protect her rights? Civil liberties refer to personal freedoms protected from government intrusion such as those listed in The Bill of Rights. 18 U.S.C. section 242. Petitioner is seeking the right to be heard, the right to be protected, the right to restitution, and the right to property. Freedom for the pike is death to the minnow. The liberty of some must depend on the retraining of others. Congress is only beginning to highlight the vulnerabilities in our system. Congress must work to put into place the necessary safeguards to ensure what happened here doesn't happen again. Standing is a primary defense claim. When a banker trades it's his neck on the line not the Petitioner's. Petitioner is solely executing her right to freedom of expression and she has been silenced, intimidated and constrained. Past experience has taught us that even in the most dismal periods we can come together as a people to address our challenges. It is now high time to do it again. This case makes a compelling argument for openness and transparency.

Finra is a massive private company and enjoys a strange status in our law. In its present iteration The Nondelegation Doctrine allows Congress to give away legislative authority to agencies as long as the authority is pursuant to an 'intelligent principle'. Finra acts like a levy against all the people by a state accountable to only some of the people. SHOULD SCOTUS VOID SOME CRITICAL SRO RULE? WILL SCOTUS EXTEND ITS EMERGING DOCTRINES TO INVALIDATE FINRA? The circuits have split over whether to subject Finra to Constitutional constraints. Prior precedents have not been useful to courts trying to analyze unique forms of private activity. Finra is a private/public entity like no other considered by the Supreme Court. SHOULD SCOTUS TAKE RENEWED INTEREST IN ITS PRIVATE NONDELEGATION DOCTRINE?

There was such a lack of safety and safety standards that no one was checking. Nobody was doing their job. Finra registered representatives did not exercise due caution or circumspection and this is what happened here. There is more than enough evidence to support allegations and bring this case to trial. Everyone involved should have known safety was an issue. Sometimes people are 'producers' in name but are not actually in charge of things in a hands-on way. The highest burden on our legal system on prosecutors is to prove a case beyond reasonable doubt. This is a really difficult case for the prosecution. The perpetrators should have been caught. The charges will send a clear message about safety in the future.

The problem is the system itself is malfunctioning. This is extremely concerning and absolutely unconstitutional. Finra is abusing its power with its drastic expansion of power. The court should open its own investigation and prosecute. Finra acting under the banner of safeguarding democracy is instead harming the balance of power. We cannot disrespect democracy to protect it. Congress in using a broad interpretation of the court's powers has skirted its duties. Consider new laws. Let abused investors decide rather than some virtue signaling bureaucrats. There are dissenting voices. Finra poses grave perils for democracy which should overshadow concerns about judicial overreach. Finra's aggressive tactics are prompting debate.

REASON FOR GRANTING CERTIORARI, ARGUMENT

Unvarnished correspondence about how Finra wields its power is hard to come by. The system is opaque and Finra knows how to game the rules. It's unconscionable that Finra would stack the deck against American investors who have had their lives turned upside down and their funds stolen from them. It's Petitioner's hope that the SEC and Congress will get to the bottom of this. The organizations that are supposed to be protecting their investors and ensuring a fair market are working backdoor deals and doing anything they want even if it means screwing others over. Hedge funds sit on Finra's board of directors, the same organization that allegedly exists to ensure market integrity. A more comprehensive reform is needed to include righting wrongs. Petitioner is suffering from the stress of injustice and the demands of working in a punitive system with laws and practices that target those who are most disadvantaged.

DOES FINRA HAVE IMMUNITY? The lower court incorrectly applied factors specific to this case. Defendants say they are innocent because they accidentally hired a guy to do the dirty work. Petitioner believes she has been the victim of fraud. Only investors who have actually bought or sold securities can bring a 10 b-5 claim. Congressional action has been gravely disappointing from both public safety and economic standpoints. Finra uses obscure loopholes and manipulates the rules. The fact that they keep all this information sealed is not surprising. Petitioner realizes there is a great legal hurdle in getting this case heard and doesn't want legal precedent prohibiting the admission of her research. **SHE IS CHALLENGING THE SCOPE OF LAWS DESIGNED TO SHIELD FINRA FROM LIABILITY.** Petitioner is convinced that if a jury could hear this information they would be as convinced as she is about the defendant's guilt. Government should play a larger role in protecting fundamental liberties and providing a safety net. If Congress believes the language of a statute does not reflect what Congress intended or wants to cut back on the broad authority or direction it has given to an executive agency it is free to amend a statute or enact new legislation but nothing in the Constitution gives SCOTUS the authority to do so.

Where an agency action would have extraordinary and political significance it must rest on exceptionally clear Congressional authority that is lacking in this case. Is Finra's separation of powers structured in a way that violates Constitutional requirements potentially threatening the validity of its past actions and its viability going forward? Has Finra adequately responded to public requests seeking access to documents or is it improperly invoking decisions to withhold information? Petitioner has suffered and is threatened with imminent injury that entitles her to be heard in court (standing). Finra seeks to nullify agency rules designed to protect the public interest. **IS FINRA A QUASI GOVERNMENTAL ENTITY WITH PRIVATE/PUBLIC DISTINCTION?**

Finra's structure is unconstitutional. If Finra's laws are merely rules under the Administrative Procedure Act they must go through Notice and Comment and be promulgated by an actual government agency that is subject to statutory and Constitutional limitations. Finra's governing structure is impermissibly insulated from Presidential control under the Free Enterprise Fund. Finra's regulatory role is that of an executive agency but it operates outside the bounds of our Constitution breaking the social contract that undergirds the political system. We grant the government the power to bind us only because it promises to act within the limits agreed upon through the Constitution and Amendments. It is up to the President and Congress to take the lead. The absence of direct political control over Finra decisions allows Finra to take measures without considering short term political factors. Finra has narrow but important responsibilities to use its oversight of banks and ensure they manage the risks. Finra is free of political consideration and is pursuing perceived social benefits that are not linked to statutory authority. Non- state actors have varied self-motivated interests.

Finra's structure is unconstitutional because it can place citizens in financial and social ruin with no redress in the courts and only limited review by the SEC. It is long past time to extend the State Action Doctrine to Finra or to remove its authority completely and place financial services regulation in Congress' hands. To the court the government is a government of the people. Broker dealer activity is not interpreted in the same way under securities law and banking law. Broker dealers must supervise the activities of their employees whether they are considered employees or independent contractors. Banks and other savings institutions are excluded from the definition of broker-dealer but bank holding companies are not. Finra is a regulator of central importance to the functioning of the US capital markets. it is neither a true self-regulatory organization nor a government agency. It is largely unaccountable to the industry or the public. Due process, transparency and regulatory review protections are not present and its arbitration process is flawed. Reforms are necessary. Finra itself, the SEC, and Congress Should reform Finra to improve its rule making and arbitration process. Congress and the SEC need to provide greater oversight of Finra. Unless Finra is ultimately held to be a state actor, Constitutional due process protections do not apply. **THE CENTRAL QUESTION BECOMES WHETHER FINRA IS EXERCISING EXECUTIVE POWER WITHIN THE MEANING OF THE CONSTITUTION OR WHETHER IT IS A TRULY PRIVATE SELF-REGULATORY ORGANIZATION.** The IRS found that Finra is a corporation serving as an agency of the US Government, internal Revenue Code Sec 162. Finra is a Government actor for purposes of immunity from lawsuits against them. see *Standard Investment Chartered v National Association of Securities dealers*.

While Finra members know full well that their brazen conduct and contempt for enforcement is illegal they have a particular fear of detection and prosecution by authorities. Finra is fully aware it is violating the law and their only concern is avoiding detection. Finra engages in hardcore activity , price fixing, bid rigging, and market and customer agreements. They have gone to great lengths to cover up their actions. Finra is the watchdog no one is watching. It is largely unaccountable to the industry and the public. Due process, transparency, and regulatory review protections normally associated with regulations are not present and its arbitration process is flawed. Reforms are necessary. IS FINRA A GOVERNMENT OR NOT A GOVERNMENT AGENCY? As long as there's no choice for brokers and the public it's a monopoly and monopolies need to be regulated. Finra is not subject to laws that would allow the public to attend its meetings nor is it subject to the Freedom of Information Act, which allows anyone to request information about any matter from a federal agency. Finra has demonstrated it is not here to help her.

Finra protects itself from lawsuits from members by claiming that as an SRO it has absolute immunity from private lawsuits challenging the conduct of its regulatory mission. There is virtually no public information about how Finra uses the reserves it receives from its fees and other income. Make no mistake, at Finra they are running a very big business. The aggressiveness with which Finra issues fines and its use of strong arm tactics to collect them has not gone unnoticed. By law the SEC is in charge of Finra and has the power to approve or reject any rules Finra wants to adopt but it applies only a rubber stamp to Finra's rules. In practice Finra operates with substantial independence from the SEC. Finra is an issue they need to pay attention to. Although Finra is not directly accountable to Congress it does invest a lot of money in lobbying. Finra's governance is lacking. Many of Finra's public governors have had long industry careers and serve on boards of other financial services boards. Finra's incentives for doing anything groundbreaking to advance the pro investor agenda are non-existent.

Finra is under current rulings both a state actor for purposes of barring liability and for that purpose and generally not a state actor for purposes absolving it of due process liability purposes. Finra is arguably unconstitutional for at least two reasons, the separation of powers, the 5th Amendment due process clause and associated Nondelegation Doctrine. The due process transparency, accountability and governance questions raised herein are policy questions that Congress should address. see Free Enterprise Fund v Public Company Accounting Oversight. Because Finra is tasked with enforcing securities laws and its board and officers are not removable by the President, and SEC commissioners are only removable by cause a court might construe Finra violates the Separation of Powers Clause. THE CENTRAL QUESTION IS WHETHER FINRA IS EXERCISING EXECUTIVE POWER WITHIN THE MEANING OF THE CONSTITUTION OR WHETHER IT IS TRULY A PRIVATE SELF-REGULATING ORGANIZATION.

Fraud is disturbingly common. What people don't get is how widespread the problem of corporate fraud is. Given how common fraud is at audited public companies misconduct is likely more pervasive at privately held businesses which are only loosely regulated. Even people who have spent their careers digging into corporate wrongdoing have trouble estimating just how much fraud goes on in big business and how little it is detected with legal review. It is very difficult to prove misconduct and target everyone involved in wrongdoing. In big public companies you have to show intent and that's tough because it takes a village (i.e. a bipartite core) to commit fraud. Legally speaking prosecutors have to prove intent to defraud but that's not easy because perpetrators are often expert at lying to themselves and defiant about the rules. The bureaucrats are holding us back. Deception is rampant. You've gotta break some eggs to make an omelet. This case arises from accusations that were never proven by the prosecution.

Petitioner is supposed to be protected. How many individuals is our society prepared to sacrifice as collateral damage? Do not refuse her a lethal prescription. She has no other choice. Petitioner claims a good faith requirement of the law. Is society really ready to ignore the risks, tolerate the abuse, marginalize and cover up the mistakes and agree some lives are expendable? If the intent of law is to provide protection a negligence standard would be more appropriate. This case makes a compelling argument for openness and transparency and judicial review. Certainly judicial review is required on other matters no less significant than what is at stake here. Law is a laboratory lacking all transparency and accountability with no information other

than of a statistical kind made available to the public. We have been assured that all is well and that no abuses are occurring. Regulations with the ring of authenticity and oversight are a Potemkin village form of regulatory obfuscation. They look good, feel good, but have nothing behind them. The ambiguity of what happens after is highly problematic. There is absence of real choice and this would be an act of personal autonomy. Petitioner not dead yet. Ending the pain and mental anguish from which she will not recover does not violate the spirit of our goals of ethics. Judges are experts at hearing and assessing evidence. Petitioner is allowing the court to process this request along with the other evidence. The law should be applied to ensure eligibility criteria are met and that vulnerable individuals are protected. Our courts are equipped to make sure this is done. Petitioner asks the court to officiate and offer the prospect of resolving what is a complex and emotive issue. Our Constitution is not self-enforcing. The 14th Amendment concludes by empowering Congress to implement its provisions. President Biden should act on his own taking steps to ensure the federal government meets its obligations as the Constitution requires.

RELIEF SOUGHT

Certiorari can be issued even against Administrative authority affecting rights of individuals. This complaint gives rise to a legally cognizable claim for relief. Petitioner is seeking the right to be heard, the right to be protected, the right to restitution, and the right to property. If Congress believes the language of a statute does not reflect what Congress intended or wants to cut back on authority or direction it has given to an agency it is free to amend a statute or enact new legislation. The law should be applied to ensure vulnerable individuals are protected. A wish for death is a cry for help. Petitioner seeks that the court resolve what is a complex and emotive issue. If legal alternatives do not exist the court should be charged with ensuring Petitioner a request for assisted suicide. Petitioner is allowing the court to process this request along with the evidence. Petitioner is suffering from demoralization syndrome, hopelessness, helplessness, and despair and in fear of what might come in the future. Needing help is not undignified for ending pain and mental anguish. The court should respond to someone in intractable anguish who is seeking assistance. Civil cases are settled by means of monetary compensation for harms done and damages and orders intended to prevent future harm. If Finra refuses to fulfil its agent duties it would give the President 'for cause' grounds. It seems obvious in this case that it could. It's a heroic attribute to be so committed to a principle that you apply it not when it supports your position, not when it protects people you like, but when it defends and protects people you hate.

The Adjudicator, the wise judge, helps parties in conflict to discover common ground and build upon it and guides societies to see their greater good. With the philosophical overview that comes from long experience he listens deeply, watches closely, and speaks last. In the end his even-handedness and objectivity earn him the respect he receives from the community and those who cannot work out their problems come to him for advice. Finra needs to be awakened from that state of blinded self-interest and serve the greater good and hold itself to a higher standard and think about what it can contribute not what they are going to get and turn its attention to protecting the greater good. It's time to examine underlying assumptions and bring greater clarity into areas that have been left in the dark. This requires a thorough, methodical examination. The Constitution not only guarantees the right to free speech but also very robust due process protections. The same is true here. What Finra cannot do any longer is abuse its power or impose the credibility of its position on blatant lies. There's a huge power grab here and Congress needs to make sure that the relative committees have oversight over a powerful regulation.

CONCLUSION

Finra has expanded its regulatory reach beyond its legal authority. Finra counsel does not understand markets better than market participants. Finra is eviscerating the vital barrier in our market-driven economy between the limited and the legally constrained liabilities of the public sector and the privacy of the private sector as the driver of American prosperity. Securities laws empower Finra to combat market abuses and fraud and to ensure that investors have material information to make their own investment judgments. As President Roosevelt explained when signing the Securities Act of 1933 "It is of course, no insurance against

errors of judgment. That is the function of no government. It does give assurance, that within the limit of its powers, the federal government will insist upon knowledge of the facts on which alone judgment can be based." Finra justice is the art which gives to good friends and evil to enemies. Justice herein is nothing else than the interests of the stronger. A just man would never harm another. The origin of justice was first in social contracts aimed at preventing one from suffering injustice, unable to take revenge. Finra achieves great advantages by committing injustices. To Finra, men and women are only just for the results that justice brings, fortune, honor, and reputation.

Justice is the interest of the strong, merely a name for what the powerful and cunning has imposed on the people. The absence of bias refers to an equal ground for all people involved in a disagreement. In some cases wrongdoing must be balanced or made good in some way, and so the criminal deserves to be punished. Restorative, reparative justice focuses on the needs of victims and offenders. Victims take an active role in the process while offenders are encouraged to take responsibility for their actions to repair the harm they've done by returning stolen money. It is based on the theory of justice that considers crime and wrongdoing to be an offense against an individual rather than the state. Reparation is due. In civil cases the decision is known as a judgment. Civil cases are settled by means of monetary compensation for harms done, and damages and orders intended to prevent future harm i.e. injunctions. Justice is an ideal the world fails to look up to sometimes due to deliberate opposition to justice despite understanding. An organization that hires people to do something stupid will tend to continue to do it, because the people they've hired will lobby for it in order to keep their jobs. Very few people get paid to do a job. They get paid to exact a performance, and this is the problem with modern management and human beings. All components of an organization self-justify their existence. This is why governments only expand in power and scope. 1776, "We hold these truths to be self-evident". 2023, "citation needed", as currently practiced it's more about the argument from authority than the argument from the laboratory.

Financial crimes made a debut in Finra's New Year Report. The retail sector is calling Finra corrupt. Twenty two Congressional members voted against market transparency. Finra was created to preserve monopolies not protect consumers. Finra as a non-governmental self-regulatory organization does not have authority to prosecute criminal activity. In general ACATS transfers take 4-8 business days and almost all complete in 10 business days not nearly 4 months which was the case herein.. In its anti- money laundering section Finra rules such as Rule 3310(a) requires that member firms establish and implement anti-money laundering policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions. 58 out of 60 exception reports in this case went unanswered. ACATS fraud refers to fraudulent transfers through ACATS, a system that facilitates the transfer of securities and reviews red flags from one trading account to another at a different brokerage firm, as new account fraud is incorporated into their customer onboarding process. As stated in the National Law Review financial crime and manipulative trading are risks. Finra, while possessing no prosecutorial power, itself is seeking to broaden its mandate so as to take a more active role in maintaining the integrity of the financial markets. Finra is made up of insiders from all the big market movers and hedge funds. US brokerage firms use a standardized system to transfer customer accounts, ACATS, Automated Customer Account Transfer Services. Each receiving broker maintains its own requirements as to what it will accept. In this case the receiving firm would not accept the holdings in the margin account as acceptable for trading and viewed the account as a margin credit violation. The holdings were rejected by the receiving broker for credit violation and the account was placed in margin deficit and subjected to forced liquidation resulting in an additional \$267,000 loss. The transferred account did not meet the new firm's margin standards. The allegations will send a clear message in the future.

Congress and state legislatures have long exercised their authority to empower private parties who are injured to sue the wrongdoer. There has been a recent movement among legislators to enact laws that allow private Petitioners to sue for wrongs done to society in general. All Americans have the ability to exercise their Constitutional rights. Legislators cannot meaningfully use standard tools to guide enforcement. Private enforcement provisions eviscerate political accountability which is a vital part of our representative democracy. Much has been made of the tremendous power unelected bureaucrats have to impose mandates on Americans with zero political accountability. State laws give private organizations unchecked enforcement

power. Private agencies which choose to enforce laws will often hold the most extreme and aggressive views on the topic. Rules of law and the predictability of laws and law enforcement are critical in any society. Granted, laws are often complex and ambiguous but through politically accountable execution individuals can navigate this complexity and ambiguity by looking at clarifying regulations, guidance and enforcement priorities. None of those safeguards exist if private agencies are empowered to enforce the law using novel legal theories or in unanticipated factual circumstances. This unpredictability is not only harmful but also undermines the authority of regulators to guide compliance. Because private enforcement is not state action, private enforcement is not bound by legal doctrines against arbitrary enforcement of the law. Private agencies can use these laws for partisan warfare which would only further divide our country and make our citizens less trusting of our institutions and each other. State officials looking to skirt political accountability may use private enforcement to escape Constitutional limits on executive enforcement or execute enforcement and create a race to the bottom in the process. Private enforcement schemes create a patchwork of laws that chill individuals from exercising their federal Constitutional rights. Now more than ever we need to create solutions to bring us together as a society. By privatizing enforcement legislators are doing the opposite. Instead of looking for solutions we can agree on, we are arming private agencies with a legal cudgel to hold over Americans.

There was such a lack of safety and safety standards no one was checking. Nobody was doing their job. Finra registered representatives did not exercise due caution or circumspection and this is what happened here. There is more than enough evidence to support allegations and bring this case to trial. Everyone involved should have known safety was an issue. Sometimes people are 'producers' in name but are not actually in charge of things in a hands-on way. The highest burden on our legal system on prosecutors is to prove a case beyond reasonable doubt. This is a really difficult case for the prosecution. The perpetrators should have been caught. The charges will send a clear message about safety in the future.

The problem is the system itself is malfunctioning. This is extremely concerning and absolutely unconstitutional. Finra is abusing its power with its drastic expansion of power. The court should open its own investigation and prosecute. Finra acting under the banner of safeguarding democracy is instead harming the balance of power. We cannot disrespect democracy to protect it. Congress in using a broad interpretation of the court's powers has skirted its duties. Consider new laws. Let abused investors decide rather than some virtue signaling bureaucrats. There are dissenting voices. Finra poses grave perils for democracy which should overshadow concerns about judicial overreach. Finra's aggressive tactics are prompting debate.

Socrates uses the parable of the ship. The unjust city is like a ship in the open ocean, crewed by a powerful but drunken captain, a group of untrustworthy advisors who try to manipulate the captain into giving them power over the ship's course and a navigator who is the only one who knows how to get the ship to port. The only way the ship will reach its destination is if the navigator takes charge. Our Constitution is not self-enforcing. The 14th Amendment concludes by empowering Congress to implement its provisions. President Biden should act on his own taking steps to ensure the federal government meets its obligations as the Constitution requires. Laws are there for a reason.

CERTIFICATIONS, FOOTNOTES

1. Because the industry does not control Finra it is inappropriate to regard Finra as an SRO
2. Jackson v Metropolitan Edison Co., 419 U.S. 345 Whether there is sufficiently close nexus between the state and the challenged actions
3. 2nd Circuit 2015 Finra is not a state actor.

4. 2011 opinion 11th Circuit raised & sidestepped the issue 'even if Finra were a state actor. Busacca v US Court of Appeals 11th Circuit, 936 F. 2d 232
5. The IRS has found that Finra is a corporation serving as an agency or instrumentality of the government of the US for purposes of determining whether Finra fines are deductible as a business expense. A penalty paid to the government is not deductible.
6. Courts have held that Finra and its predecessor organizations are government actors for purposes of immunity from private lawsuits against them.
7. Standard Investment Chartered Inc. v National Association of Securities Dealers, 2nd Circuit. No. 10-945 2nd Circuit 2011.
8. When dealing with Finra the many protections afforded the public when dealing with the public are unavailable and the recourse that one would ordinarily have when dealing with a private party. Both access to the courts and the ability to decline to do business is also unavailable. Finra under current rulings is both a state actor for purposes of barring liability and for tax purposes of absolving it of due process and other requirements for liability purposes.
9. The bottom line is Finra has a monopoly.
10. SCOTUS in Free Enterprise Fund v Public Company Accounting Oversight Board, 561 U.S. 477 held the dual for cause provisions in 15 US Code 7211(e)(6) in the Section of Sarbanes- Oxley creating the Public Company Board to be unconstitutional on separation of powers grounds.
11. In Free Enterprise 561 US 477, 483-484 because Finra is tasked with enforcing securities laws and its board of governors are not removable by the President & SEC commissioners are only removable for cause a court might conclude that Finra violates the Separation of Powers Clause
12. The court's State Action of Powers jurisprudence has evolved since Todd et al v Johnson courts considered the issue.
13. Congress should amend 15A and 19 of the Securities Exchange Act such that an SRO must meet outlined requirements as a condition of registration. Current law already imposes more than 20 requirements, Securities and Exchange Act 15A (b)-(d)
14. Finra is not truly an SRO.
15. Finra should comply with a set of rules similar to the requirements imposed on government agencies under The Freedom of Information Act. 5 US Code 552. The right of access to information.
16. Finra's Board of Governors meetings should be open to the public unless the board votes to meet in executive session. Finra does not make available advance rule makings. Such requirements are analogous to but less stringent than the requirements imposed by the government by the Sunshine Act 5 US Code 552 (b) US.
17. Given under current law Finra proceedings supplant a civil trial and there is no means of accessing the courts. Arbitration hearings should be open to the public and reported. 6th Amendment Public Trial requirement see Cowley v Pulsiver
18. Alternately Congress should consider a different approach. It could create a specialized court to hear intra industry and customer securities cases i.e. a specialized Article 111 Court.

19. see Edward J. Eberie "Procedural Due Process: The Original Understanding Constitutional Commentary vol 4 (1987) PP 339-362
20. Secrecy is not congenial to truth seeking. Joint Anti- Fascist Refugee Committee v McGrath 341 US 123 171-172(1951)
21. The government's Accounting Office has found the SEC's oversight of Finra to be insufficient.
22. Finra needs to undertake a systematic review of its rules and regulatory practices comparable to the small-entity impact review required of federal agencies under The Regulatory Flexibility Act of 1980 5 US code 603. Public Law 96-354
23. Finra fees are not voluntary. Before raising these fees Finra should be required to obtain an affirmative vote by Congress or at least the SEC.
24. Congress should consider making Finra on budget for purposes of the federal budget along with other government sponsored enterprises, quasi government agencies, agency related non profit organizations and the like that currently escape congressional oversight during the budget process. Kevin R. Kosar: The Quasi Government Hybrid Organizations.
25. Finra should comply with a set of rules substantially similar to the requirements imposed on government agencies relating to The Notice and Comment Provisions of The Administrative Procedures Act 5 US Code 553. 79-404, 60 stat 237 (1946).
26. Post 1991 SCOTUS rules that Certiorari can be issued even against Administrative authority affecting rights of an individual. see Filarsky v. Delia s.c. 1983 1325,ct 1657 extends to a lawyer who is working for the government but is not a government employee.
27. Major Questions Doctrine, important questions of federal law or the Constitution.
28. Can a self-advocating person receive equal protection and due process in a court without a lawyer?
29. In a civil case can a person who is not represented by a lawyer get a fair result?
30. 5th Amendment defamation and right to petition the government for redress
31. Privileges and Immunities Clause Article 1V. S2. C 1-2.
32. 7th Amendment , right to jury trial
33. A negative right is a right not to be subjected to certain behaviors of our government or other individuals.
34. A company can be held responsible for an employee's action to enrich himself.
35. Civil liberties refer to personal freedoms protected from government intrusion such as those listed in the Bill of Rights 18 USC section 242
36. Finra Unconstitutional, Scottsdale and Alpine Oct 2022 8:22-cv-02347, lawsuit challenging Finra's legal status.
37. The Elections Clause was put in the Constitution simply because the founders did not trust state legislatures thinking they would be captured by factions and would gerrymander abuses. The history for Independent State Legislature Theory is so threadbare that advocates have begun citing phony historical

documents.

38. Baker v Carr 369 U.S. 186 (1962) federal courts should not hear cases in which the Constitution makes the sole responsibility of the executive branch or the legislative branch.

39. If Finra's laws are just rules under the Administrative Procedures Act they must be promulgated by an actual government agency subject to statutory and Constitutional limitations.

40. Finra's governing body is insulated from Presidential control under the Free Enterprise Fund.

41. Finra's regulatory role is that of an executive agency but it acts outside the bounds of the Constitution breaking the social contract that undergirds our political system. see Scottsdale Advisors & Alpine Securities.

42. Finra is seriously flawed. It is unconstitutional under the Appointments Clause, Separation of Powers Principle and Non-Delegation Doctrine. Finra's structure and operations violate the Constitution's Separation of Powers and Appointments Clause, requiring the executive branch to appoint federal officers.

43. The role of the State Action Doctrine is to create a meaningful public/private distinction in order to balance risk of overextending Constitutional restraints into the private sphere with potential for abuse when the line between private and state activity blunts.

44. The Circuits have split over whether to subject Finra to Constitutional constraints. Prior precedents have not been useful to courts analyzing unique forms of private activity.

45. 14th Amendment, no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the US nor shall any state deprive any person of life, liberty, or property without due process of law nor deny any person within its jurisdiction the equal protection of the laws.

46. The individual liberties guaranteed by the US Constitution protect against actions by government and officials but not against actions by private persons or entities. Finra is not subject to Constitutional restrictions. That SRO leaders are not government appointed may not suffice to shield an SRO from duty to ensure faithful execution of laws. So far neither courts nor the SEC has been willing to subject SROs to the Constitutional requirement of due process. see Collins v Yellin. 19-433 06/23/2021/596 U.S.

47. As SROs now enforce and interpret they may be vulnerable to challenge.

48. SCOTUS removed protections for the head of The Federal Housing Finance Agency (FHFA). see Free Enterprise Fund. A critical SCOTUS case where Chief Justice Roberts declared for cause removal protections for members of the Public Conser Accounting Oversight Board as unconstitutional.

49. The 1st & 4th Amendments prohibit federal & state governments from violating certain rights and freedoms.

50. If government agencies are simply members of a private organization the actions of the organization are not state action but if the government is pervasively entwined with leadership of the organization the acts are state acts are state actions see Brentwood v Ter 535 US 97 2012

51. Congress must put in place the necessary safeguards to ensure what happened here doesn't happen again. It's long past time to extend the State Action Doctrine to Finra or remove its authority entirely and place financial services in Congress' hands.

52. In The Matter of Application of Michael Earl McCune for Review of Disciplinary Action, opinion, SEC Commission 134 Act Rel No 77357, Admin Proc file # 3-167,68 (March 2016). Finra is a private actor not a

state actor. subject to Constitutional Requirements. see *DL Cromwell Invests, Inc v NASD* 279F. 3d 155, 161-62(2nd Cir 2002) Not subject to Requirements of the 5th Amendment. *Desidero v National Association of Securities Dealers Inc* 191 F.3d 198, 206-07 (2nd Cir). NASD was a private actor not a state actor.

53. As the SEC has opined, Finra is not a government actor. Just by going by the SEC's own words in *Romano*, Finra is not engaged in state action and is not inherently a state actor notwithstanding some degree of governmental cooperation in its investigations. see *In the Matter of the Application of Michael Nicholas Romano for Review and Disciplinary Action Taken by Finra*.

54. It is established that close timing of Finra and government investigations do not establish state action.

55. In the matter of Dept of Enforcement, Complainant v Robert R. Tweed Respondent Finra National Adjudicatory Council decision Complaint No. 2015046631101 Dec 11, 2019. Finra is not a government entity. As such it would seem a fairly straightforward and established proposition that Finra is a private actor and not a federal state agency.

56. *Dickens v. Brewer* (EDMI). Shawn Kristi Dickens Petitioner Shawn Brewer Respondent Opinion and Order for the Eastern District of Michigan 19-cv-11676. Finra State Investigative Agency. She cooperated with state investigations. 75 minute recording of her interview with state investigators. Did something actually transpire by which a line was crossed and Finra, a non governmental actor with no criminal enforcement powers was deemed to be standing in the shoes of a state prosecutor? Federal court turned Finra into a state criminal prosecutor.

57. *McCulloch v Maryland* (1819) 17 U.S. 316, Supreme Court ruled that Congress had implied powers under the Necessary and Proper Clause of Article 1, Section 8 of the Constitution and the state lacked power. It gave Congress broad discretionary power to implant enumerated powers and repudiated the states' right argument.

58. Pursuant to the Supremacy Clause of Article 1V of the Constitution the laws of the US trump conflicting state laws . The government is supreme within its actions and laws made in pursuance of the Constitution a form of supreme law of the land. Article VI Paragraph 2 of the US Constitution

59. If *Marbury v Madison* (1803) 19-422 promised that SCOTUS would exercise great authority in shaping the laws of the land, *McCulloch v Maryland* fulfilled that promise for the first time. Arguably no other decision has so profoundly defined national power. In one case the court expanded Congress' powers to include those implied by the Constitution, established the inferior status of the states, and set Constitutional sovereignty of the federal government *McCulloch* remains a fundamental and binding bedrock of American Constitutional law.

60. FINRA CAN'T BE OVERRULED BY A STATE ADMINISTRATION UNDER ANY CIRCUMSTANCES.

61. The current Nondelegation Doctrine may not be long for this world. see *Gundy v United States*. In its present iteration the doctrine allows Congress to give away legislative authority to agencies as long as the authority is pursuant to an intelligible principle despite Article 1, Sec 1 of the Constitution stating that all legislative powers herein granted should be vested in Congress. Scotus has begun to chip away at the Administrative state's insulation from presidential control in cases such as the *free Enterprise Fund v Public Company Oversight Accounting Board* and *Lucia v SEC*. A vast swath of the financial services industry has been delegated to an organization that is not part of the government and has no accountability to the President.

62. NCLA legal.org 2019, Finra is a double delegation disaster.

63. *Shelley v Kraemer* 334 U.S. 1 (1948) Finra is not a state actor under the meaning it is not held to

Constitutional standards in its adjudication or general conduct but is a state actor for the purpose of immunity from lawsuits.

64. *Caputi v Wells Fargo*, No. 20-3059 Oct 2022, manifest disregard of the law.

65. Circuit Courts of Appeals are split. 3rd Circuit Affirms right to Finra Arbitration. 5th Circuit ruled against a similar forum selection clause *UBS v Carilion Clinic*, 706 F.3d 319 (2013) while the 2nd Circuit *Goldman v Golden Empire Schools Financing* 767 F.3d 210 (2014) and 9th Circuits (*Goldman v City of Reno* 747 F.3d 733 (2014)) have upheld former selection clauses. *Goldman Sachs Group Inc v Arkansas Teacher Retirement System*. SCOTUS granted Certiorari in *Pivotal Software Inc v Tron*. The split between 2nd, 1st, and 9th Circuits deepened. *Cleary Gottlieb* 2022. 3rd, 9th, & 10th American Pipe furthering the split with 6th and 9th Circuits. 10th Circuit splits with the DC Circuit on Constitutionality of SEC appointed law judges. *Appointments Clause*. *bandimere v Sec* F.3d 2016 7439007 10th Cir 2016.

66. Sec 18 Of the Securities Exchange Act. 18(a) Exchange Act of 1934, liability on any person who makes a materially false statement

67. Rule 506 of Reg D, decide what information to give to accredited investors free from false or misleading statements. Sec.gov. Rules & regulations

68. NASD Rule Violations, Conduct Rule 2110 Standard of Commercial Honor and Principles of Trade, Conduct Rule 3040 Private Transactions, Conduct Rule 3010 Supervision, Conduct Rule 3040 Private Securities transactions of an associated person, NASD conduct Rule 2120, use of manipulative, deceptive or other fraudulent devices, NASD Rule 2110 H2 under NASD Conduct Rule IM 2310-2, fair dealing with customers. misuse of customer funds, forgery, misstatement of material facts and manipulations and various deceptions, these activities are also subject to civil laws and sanctions of federal and state governments. SEC Act of 1933 prohibits fraud, deceit, misrepresentation and any other types of fraud. Providing false or misleading information, malpractice or ineptitude.

69. Unless Finra is ultimately held to be a state actor, Constitutional due process protections do not apply. *Jackson v Metropolitan Edison Co.* 419 US 345, 351, 95 s.ct, *Blum v Yaretsky*, 2015 2nd Circuit, 457 U.S. 991 1025 ct 2777 (1982) Finra is not a state actor. In 2011 11th Circuit sidestepped the issue. The IRS found that Finra is a corporation serving as an agency of the US Government Internal Revenue Code Sec 162(F). Finra is a government actor for purposes of immunity from private lawsuits against Standard Investment Chartered v National Association of Securities dealers. 2nd Circuit when dealing with Finra the many protections afforded to the public when dealing with the government are unavailable.

70. Finra is a Delaware nonprofit Corporation that is tax exempt under Sec 501 (c) (6) of the Internal Revenue Code. it is not subject to Notice and Comment provisions under the Administrative Procedures Act 5 US Code 553, The Freedom of Information Act 5 US Code 552, The Sunshine Act US Code 552b, The Regulatory Flexibility Act 5 US Code 601-612, The Paperwork Reduction Act 44 US Code 3501-3531 or cost benefit analysis requirements.

71. *Bandimere v Sec*, 884 F.3d 1168 (2016) the SEC's administrative judges are inferior officers whose appointments violate the Appointments Clause because they must be appointed by the President. Conflicts with *Lucia v SEC*, 585, challenging SEC forum as unconstitutional.

72. Constitutional claims against Finra are either valid or invalid. *Scottsdale Capital Advisors and Alpine Securities Corp.* Finra's structure and operation violate the US Constitution. Finra is Unconstitutional under the Appointments Clause, Separation of Powers Principle and the Nondelegation Doctrine State action and Appointments Clause issues.

73. Finra needs to undertake a systematic review of its rules and regulatory practices comparable to the

small-entity impact service required of federal agencies under The Regulatory Flexibility Act 5 US Code 603

74. Congress should consider making Finra on budget for purposes of the federal budget along with other government sponsored enterprises, quasi government entities, agency-related non-profit organizations and the like that currently escape Congressional oversight during budget process Kevin R. Kosar The Quasi - Government Hybrid Organizations.

75. Finra should comply with a set of rules substantially similar to the requirements imposed on government agencies relating to the Notice and Comment provisions of the Administrative procedures act 5 US Code 553

76. Post 1991 SCOTUS ruled that Certiorari can be issued even against Administrative Authority affecting rights of individuals see *Filarsky v Delia* , extends to a lawyer who is working for the government but is not a government employee.

77. Victims Rights Restitution Act of 1990 4(h) USC 10607(c). The Exchange Act allows investors to sue market participants who have defrauded them, see Section 10(b) codified in USC 78. The primary anti-fraud statutory provision, see Rule 10-b , prohibits the use of any device, scheme, or artifice to defraud and imposes liability for any misstatement or omission of material fact.

78. Janney Montgomery Scott routinely screwed its customers and demonized them. see Major Questions Doctrine and Grandfather Clause.

79. Violence Against Women's Act of 1994, the court must order restitution and pay the victim the full amount of loss.

80. *Jones v Alfred H. Mayer Co.* private party was held liable for discrimination. 392 U.S. 409 (1968)

81. Scapegoating is unlawful when it expresses a clear sense of wrongdoing, discrimination or retaliation, the neglected victims, because of an overly solicitous concern for the interests of the defendants.

82. False Claims Act, the government's lawsuit seeks civil fines and treble damages under the Federal False Claims Act.

83. Article 1V Sec 4, The Domestic Violence Clause, on application of the state legislatures the US shall protect against domestic violence.

84. *Baker v Carr* (1962) Federal courts should not hear cases which deal with issues that the Constitution makes the sole responsibility of the Executive Branch or the Legislative Branch

85. Finra Rule 2165 allows a broker-dealer to place a hold on transactions if there is reasonable suspicion of financial exploitation of a senior.

86. The Bill of Rights provides protection for individual liberty from actions by government officials This is called the State-Action Doctrine

87. A section 1983 claim section 1983 42 USC Section 1983 is a federal law that allows citizens to sue for violations of rights conferred by the US Constitution or federal laws

88. SCOTUS has the final say in matters involving federal law including Constitutional interpretation and can overrule decisions by state courts see *Mcculloch v M, Maryland* 17 US

89. Article V1 Paragraph 2 of the US Constitution is commonly referred to as the Supremacy Clause. it establishes that the federal constitution and federal law generally take precedence over state laws and even

state Constitutions to supersede any existing valid law . no one is bound to obey an unconstitutional law and no courts are bound to enforce it.

90. Petition for Rulemaking to Abrogate or Amend Finra Authority Rules 2268(d) 1220, & 12204(a). Those Finra rules are unlawful and must be amended or abrogated to comply with federal law.

91. Bracewell, US: Finra Facts and Trends Nov. 2022

92. Finra unconstitutional Scottsdale-Alpine oct 2022 8:22-cv-02347 lawsuit challenging Finra's constitutional status.

93. NCLA Jay Schaefer, Double-Delegation Disaster

94. What does it mean to violate civil liberties when a government agency overreaches to overstep their authority acting in an intrusive manner and violates the rights of individuals?

95. Negative rights may include civil and political rights, freedom of speech, life, private property protection against being defrauded and fair trial and the right not to be enslaved by another

96. The Bill of Rights and the 14th Amendment protect civil liberties.

97. False Claims Act, 'Lincoln Law', imposes liability on persons and companies who defraud the government. A tool combating fraud.

98. Grandfather Clause, a section of a law, regulation, or other legal doctrine that limits how changes will be applied to legal relations and activities existing prior to the change.

99. Major Questions Doctrine holds that courts should not defer to agency interpretations that concern questions of 'vast economic or political significance'. SCOTUS justifies this limitation with the Nondelegation Doctrine.

100. SEC Whistleblower Program. The Commission is authorized by Congress to provide monetary awards to eligible individuals who come forward with high-quality original information that leads to a Commission enforcement action in which \$1 million in sanctions is ordered. Finra considers Petitioner to be a whistleblower.

Respectfully Submitted, Barry Sachs, Petitioner
PAUPERIS

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari

without prepayment of costs and to proceed *in forma pauperis*

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

(Signature)

Barry Sachs, Petitioner

AFFIDAVIT OR DECLARATION

IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*