

In the Supreme Court of the United States

No. 23A_____

ROBINHOOD FINANCIAL LLC, APPLICANT

v.

WILLIAM F. GALVIN, SECRETARY OF THE
COMMONWEALTH, AND THE MASSACHUSETTS
SECURITIES DIVISION OF THE OFFICE OF THE
SECRETARY OF THE COMMONWEALTH

**APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION
FOR A WRIT OF CERTIORARI TO THE
MASSACHUSETTS SUPREME JUDICIAL COURT**

To the Honorable Ketanji Brown Jackson
Associate Justice of the United States
and Circuit Justice for the First Circuit

Pursuant to Rules 13.5 and 30.2 of this Court, counsel for applicant respectfully request a 60-day extension of time, to January 23, 2024, within which to file a petition for a writ of certiorari to review the judgment of the Massachusetts Supreme Judicial Court (SJC) in this case. The SJC entered judgment on August 25, 2023. App.1a. Without an extension, the time for filing a petition for a writ of certiorari will expire on November 24, 2023. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257(a).

1. This case concerns whether a state regulator may intentionally override a federal regulation.

After a decade of study and thousands of public comments, the SEC promulgated Regulation Best Interest in 2019 in a 173-page adopting release. Regulation Best Interest

requires broker-dealers to “[a]ct in the best interest” of retail customers when recommending securities. 84 Fed. Reg. 33,318, 33,319 (July 12, 2019). Invoking the agency’s “important goal[]” of preserving “investor access” to diverse investment products and services, the SEC rejected, over the contrary position of various interests, including the Secretary of the Commonwealth of Massachusetts, imposing fiduciary duties on broker-dealers when they recommend securities. *Id.* at 33,323.

Nine days later, the Secretary announced that Massachusetts would impose the very obligations that the SEC expressly rejected. Dismissing hundreds of comments warning that investors would lose access to valuable financial advice and products, he quickly promulgated a rule that treats “failing to act in accordance with” a fiduciary duty as a “dishonest and unethical practice[]” under the Massachusetts Uniform Securities Act. *See* 950 Code Mass. Regs. § 12.204(1)(a). He later touted the rule as the only fiduciary duty rule for broker-dealers in the Nation.

2. Roughly nine months after the rule took effect, Secretary Galvin filed an administrative complaint against applicant Robinhood Financial LLC. The complaint alleged that Robinhood engaged in “dishonest and unethical” conduct in violation of his new Fiduciary Duty Rule by publishing lists of investment categories like “100 Most Popular” or “Pharma,” and by implementing “strategies to encourage and incentivize” customer engagement. Robinhood sued in Massachusetts Superior Court, seeking a declaration that the Massachusetts rule violates state law and is preempted by Regulation Best Interest. The Superior Court ruled for Robinhood on state-law grounds, finding that “the Secretary’s promulgation of the Fiduciary Duty Rule was beyond his authority.” *Robinhood Fin. LLC v. Galvin*, 2022 WL 1720131, at *2 (Mass. Super. Mar. 30, 2022). The court did not reach Robinhood’s federal-law argument that Regulation Best Interest preempts the Massachusetts rule because the state rule stands as an obstacle to the full purposes and objectives of Regulation Best Interest.

3. The SJC reversed. Regarding preemption, the SJC conceded that the SEC rejected a fiduciary standard in order to preserve consumer choice and access. App.43a-44a. The court nonetheless dismissed the SEC's goal as not a "significant regulatory objective." App.44a-46a. The court did not address the fact that the SEC itself repeatedly called its choice-preserving goal "important," and that this goal was the driving motivation for the SEC's rejection of the standard that Secretary Galvin later adopted. *See* 84 Fed. Reg. at 33,322, 33,323, 33,463, 33,491.

The SJC also emphasized that the SEC was "aware of State laws imposing fiduciary obligations on broker-dealers and declined" to expressly preempt those laws. App.39a; *see also* App.40a; App.43-44a. But the SJC did not engage with Robinhood's argument that, unlike with express preemption, conflict preemption *does not* require a "specific, formal agency statement identifying conflict." *Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 884 (2000). In fact, the SEC did not disavow an intent to preempt; it simply acknowledged that the regulation's preemptive force would have to be adjudicated on a case-by-case basis, depending on the content of the relevant state law. 84 Fed. Reg. at 33,327. This case presents the paradigmatic case for preemption: Massachusetts adopted the very standard the SEC rejected, for the express purpose of overriding the SEC's policy choice.

4. Counsel respectfully requests a 60-day extension of time to file a petition for certiorari. This case presents significant and complex issues regarding the preemptive force of a major federal regulation that prompted thousands of comments. In addition, undersigned counsel has a number of other pending matters that will interfere with counsel's ability to file the petition on November 24, 2023. In particular, counsel delivered oral argument in *Efron v. UBS Financial Services Inc. of P.R.*, No. 21-1858 (1st Cir.), on November 6, 2023. Counsel also has the following upcoming briefing deadlines: (1) appellees' brief in *Avco Corp. v. Turn & Bank Holdings, LLC*, Nos. 23-1609, 23-1705 (3d Cir.), on November 9, 2023; (2) reply brief in *United States v. Holmes*, No. 22-10312 (9th Cir.), on November 13, 2023; and (3) reply brief in *United States v. Holmes*, No. 23-1040 (9th Cir.), anticipated to

be due on December 4, 2023. Additionally, the petition in this case is currently due the day after Thanksgiving, and several of applicant's counsel are traveling that week.

Respectfully submitted,

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NOVEMBER 6, 2023

CORPORATE DISCLOSURE STATEMENT

Robinhood Financial LLC is wholly owned by Robinhood Markets, Inc., a publicly held company.

NOVEMBER 6, 2023

/s/ Amy Mason Saharia
AMY MASON SAHARIA