

**In the Supreme Court of the United States**

TIMOTHY BARTON,

*Petitioner,*

V.

SECURITIES AND EXCHANGE COMMISSION,

*Respondent.*

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

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**BRIEF OF AMICI CURIAE  
LIBERTARIAN PARTIES OF NEW YORK; ALABAMA;  
ALASKA; CALIFORNIA; COLORADO; DISTRICT OF  
COLUMBIA; GEORGIA; HAWAII; ILLINOIS;  
LOUISIANA; MASSACHUSETTS; MICHIGAN;  
MINNESOTA; NEVADA; NORTH CAROLINA;  
OHIO; SOUTH DAKOTA; TEXAS; UTAH; VIRGINIA;  
AND WISCONSIN IN SUPPORT OF PETITIONER**

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## INTEREST OF THE AMICI CURIAE

Amici curiae<sup>1</sup> are libertarian political parties and organizations from multiple States whose members have a strong interest in preserving neutral enforcement, due process, and the historically grounded limits of equitable remedies. The amici curiae are:

- Libertarian Party of New York
- Libertarian Party of Alabama
- Libertarian Party of Alaska
- Libertarian Party of California
- Libertarian Party of Colorado
- Libertarian Party of District of Columbia
- Libertarian Party of Georgia
- Libertarian Party of Hawaii
- Libertarian Party of Illinois
- Libertarian Party of Louisiana
- Libertarian Party of Massachusetts
- Libertarian Party of Michigan
- Libertarian Party of Minnesota
- Libertarian Party of Nevada

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<sup>1</sup> Pursuant to Supreme Court Rule 37.2(a), Amici Curiae provided timely notice of their intent to file this brief to counsel for all parties. No counsel for any party authored this brief in whole or in part, and no one other than Amici and its supporters made any monetary contribution to its preparation or submission.

- Libertarian Party of North Carolina
- Libertarian Party of Ohio
- Libertarian Party of South Dakota
- Libertarian Party of Texas
- Libertarian Party of Utah
- Libertarian Party of Virginia
- Libertarian Party of Wisconsin

They appear because those safeguards are most endangered when courts authorize enterprise-wide remedies that impose irreversible consequences before adjudication.

Libertarian organizations are uniquely situated to observe this problem because they operate outside the dominant political coalitions and are therefore disproportionately exposed to enforcement practices that depart from neutral application of law. In multiple jurisdictions, public officials have, in certain contexts, framed enforcement actions in terms that raise questions about neutrality rather than legal necessity. When regulatory or prosecutorial power is exercised in that manner, it no longer functions as law enforcement. It risks functioning as coercive leverage under color of law.

This concern is not abstract. Enterprise-wide civil enforcement remedies, particularly those that seize control of assets, dismantle businesses, or destroy economic viability, are uniquely susceptible to misuse when combined with partisan enforcement discretion. These remedies impose immediate and irreversible consequences before any adjudication on the merits, often without a jury, without full process, and without

meaningful opportunity to defend. When applied selectively, they punish persons rather than conduct.

Amici do not dispute the legitimacy of law enforcement or the authority of government agencies to act within lawful bounds. They appear to address a different and more dangerous phenomenon: the use of enforcement mechanisms to achieve punitive outcomes against disfavored targets before liability is established. That practice threatens constitutional liberty through procedures that preserve the appearance of legality while eroding its substance.

Because libertarian organizations exist to defend individual liberty against the concentration and misuse of power, amici have a direct interest in ensuring that enforcement authority remains constrained by law, applied equally, and exercised only after adjudication—not as a substitute for it.



## SUMMARY OF ARGUMENT

This case presents a recurring constitutional question: whether government power may impose punitive, enterprise-destroying consequences before adjudication, and whether courts may legitimize that power through remedies that function as punishment in advance of trial.

The Constitution establishes a clear sequence. Liability is determined through adjudication, subject to due process and neutral application of law. Punishment follows only after that determination. When enforcement authority is exercised in reverse—by im-

sing enterprise-destroying consequences before liability is established—the constitutional order is inverted. Individuals are punished first and permitted to defend themselves later, if at all.

Enterprise-wide civil remedies magnify this inversion. Section 78u(d)(5) authorizes equitable relief that is “appropriate or necessary.” It does not supply authority for punitive enterprise destruction absent adjudication.

Remedies such as receiverships and sweeping asset control do not merely preserve the status quo. They destroy economic viability, foreclose access to resources necessary for defense, and render eventual vindication meaningless. Even where no wrongdoing is ultimately proven, the damage is done. In this way, enforcement becomes leverage rather than law.

This danger is acute where enforcement discretion is exercised selectively. The Constitution forbids the unequal application of law based on impermissible considerations, including viewpoint or affiliation. When public officials openly align enforcement objectives with political outcomes, and courts are asked to authorize remedies that impose irreversible harm before trial, constitutional protections are reduced to procedural formality.

The judiciary’s role is not to ratify punishment in advance of adjudication. It is to ensure that government power is exercised according to law and constrained by the safeguards that distinguish lawful authority from coercion. This Court has long recognized that it is “the province and duty of the judicial department to say what the law is,” not to supply authority that Congress has not granted or to defer to executive

interpretations that expand power beyond statutory limits.<sup>2</sup>

Recent decisions confirm that statutory silence does not authorize agencies to invent enforcement authority, and that courts must exercise independent judgment rather than defer where liberty is at stake.<sup>3</sup> Those principles are especially critical when enforcement practices carry punitive consequences that chill lawful activity and political dissent.

This petition warrants review because it presents a clean vehicle for reaffirming a foundational rule: punishment must follow adjudication, not precede it, and government power must operate within statutory and constitutional limits rather than discretionary alignment. Without clarification from this Court, enforcement mechanisms will continue to erode constitutional liberty not through overt illegality, but through procedures that achieve the same result.

This petition presents a recurring and clean federal question warranting review: whether federal courts may authorize enterprise-destroying receiverships and asset-control regimes before adjudication of liability, where such remedies exceed the historically recognized limits of equitable authority. In *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999), this Court cautioned that federal equity is confined to traditional practice absent clear congressional authorization. The decision below permits a form of pre-adjudicatory restraint that operates as punishment rather than preservation, raising structural con-

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<sup>2</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

<sup>3</sup> *Loper Bright Enters. v. Raimondo*, 603 U.S. 390 n.3, 394 (2024).

cerns this Court has not yet squarely resolved in the SEC receivership context. Receiverships under § 78u(d)(5) are frequently sought in SEC enforcement actions, increasing the likelihood that this question will recur absent guidance from this Court.

This brief does not challenge the availability of receiverships as such; it addresses only the constitutional boundary that distinguishes preservation from pre-adjudicatory punishment.



## ARGUMENTS

### **I. Selective and Punitive Enforcement Undermines the Rule of Law by Inverting the Constitutional Order**

The Constitution presumes that punishment follows adjudication. That sequence is not a technicality. It is the defining feature that distinguishes law from force. When executive agencies deploy enforcement authority in ways that impose devastating consequences before liability is established, the constitutional order is inverted. Individuals are punished first and permitted to defend themselves, if at all, afterward.

The Brief in Opposition relies heavily on the historical availability of receiverships to defend the order below. But historical equity authorized preservation pending adjudication—not enterprise-destroying displacement prior to liability. The distinction between preservation and punishment is the constitutional boundary this Court must clarify.

This inversion is most acute when enforcement is exercised selectively. The Constitution forbids the use of governmental power to target disfavored individuals or viewpoints, whether through criminal prosecution or civil enforcement. When enforcement authority produces punitive consequences prior to adjudication, courts must ensure neutral and evenhanded application of law. When courts fail to enforce that neutrality requirement, enforcement power can function as coercion under color of law.

Enterprise-wide remedies amplify this danger. Remedies such as receiverships and asset seizures impose immediate and irreversible harm. They destroy economic viability, foreclose access to resources necessary for defense, and chill lawful activity long before a jury or court has determined wrongdoing. When such remedies are sought and imposed without full adjudication, they operate as punishment in everything but name.

The question is not whether receiverships may exist, but what limiting principle constrains their scope when they function beyond preservation and into punishment.

This Court has emphasized that equitable authority must remain anchored in historical practice and statutory authorization. *See Grupo Mexicano*, 527 U.S. at 318-19. Equity may preserve assets to ensure an eventual judgment has meaning; it may not alter ownership, displace management, and impose irreversible economic consequences absent adjudication. When enterprise-wide receiverships go beyond preservation and instead restructure the economic reality of the target, they raise serious questions under Article III's

limited grant of judicial power. That boundary warrants clarification.

This Court has recognized that constitutional protections lose meaning when government action produces punitive consequences without the procedural safeguards that define due process.<sup>4</sup> Selective enforcement coupled with pre-adjudicatory remedies thus presents not merely an enforcement question, but a constitutional violation in miniature, one that erodes liberty incrementally while maintaining the outward appearance of legality.

## **II. Enterprise-Destroying Remedies Magnify the Risk of Political Coercion and Chill Lawful Dissent**

Civil enforcement mechanisms were not designed to function as tools of discipline outside the adjudicatory process. Yet enterprise-destroying remedies create exactly that risk. When agencies possess the power to seize control of assets, disrupt operations, and render targeted entities economically inert before trial, the threat alone can coerce compliance, silence dissent, and deter lawful opposition to prevailing authority.

The danger is not hypothetical. The structure of enterprise-wide remedies ensures that the costs of enforcement are borne immediately and disproportionately by the target, regardless of eventual outcome. Even successful defenses often come too late to undo the damage. That dynamic transforms enforcement into

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<sup>4</sup> *Sullivan v. Louisiana*, 508 U.S. 275, 279-80 (1993) (explaining that structural constitutional protections are not subject to harmless-error analysis because they define the framework within which trials proceed).

a form of leverage rather than a process for determining liability.

The Constitution does not tolerate such leverage when it operates to suppress lawful activity or punish expressive conduct. Equal protection and due process principles require that enforcement be neutral, proportionate, and subject to meaningful judicial scrutiny before irreparable harm occurs.<sup>5</sup> When remedies operate to destroy the subject of enforcement before adjudication, judicial review becomes illusory.

This Court has emphasized that statutory silence is not a license for agencies to expand their own authority or to impose remedies of unprecedented scope without clear congressional authorization.<sup>6</sup> That principle is especially critical where enforcement practices threaten to chill political participation, economic activity, and expressive freedom through the sheer magnitude of their consequences.

### **III. Courts Must Exercise Independent Judgment to Prevent the Misuse of Enforcement Authority**

The judiciary exists to restrain power, not to ratify its misuse. Courts must therefore exercise independent judgment when asked to authorize remedies that carry punitive effect. Deference to agency interpretation or remedial preference cannot substitute for

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<sup>5</sup> *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886) (holding that even facially neutral laws violate equal protection when applied with “an evil eye and an unequal hand”).

<sup>6</sup> *West Virginia v. EPA*, 597 U.S. 697, 716-17 (2022).

judicial responsibility where constitutional rights are at stake.

In *Loper Bright Enters. v. Raimondo*, 603 U.S. 390 (2024), this Court affirmed that courts may not defer to executive interpretations that extend beyond the best reading of statutory text, nor may they supply authority Congress has not granted. *Loper Bright Enters.*, 603 U.S. at 394 n.3. When courts abdicate that responsibility, they enable enforcement practices that operate without clear constitutional constraint.

This case presents an opportunity for the Court to reaffirm a foundational rule: government power must be exercised according to law, not political alignment, and punishment must follow adjudication, not precede it. Clarification on this point would not weaken legitimate enforcement. In recent Terms, this Court has rejected doctrines that expand administrative or judicial authority through inference rather than clear statutory command. *See Loper Bright*, 603 U.S. at 390 n.3, 394; *West Virginia v. EPA*, 597 U.S. at 716-17. The same principle applies here. If Congress intends to authorize remedies that effectively terminate enterprises prior to liability, it must say so clearly. Absent such clarity, courts must confine equitable relief to its traditional function of preserving, not preemptively punishing.

Clarification from this Court would restore the constitutional balance that protects liberty by ensuring that law constrains power rather than facilitating its abuse.

Nothing in this brief questions the legitimacy of lawful enforcement; the concern arises only when

enforcement mechanisms function as punishment before adjudication.



## CONCLUSION

This case presents a fundamental question about the limits of government power in a constitutional system that promises liberty under law. When enforcement authority is exercised in ways that impose punitive, enterprise-destroying consequences before adjudication, and when such authority is deployed selectively, the distinction between lawful regulation and coercive power is blurred. The Constitution does not permit such erosion of that distinction.

The judiciary's role is not to legitimize punishment first and adjudication later. It is to ensure that government power is exercised according to law, applied equally, and constrained by the procedural safeguards that separate justice from force. When courts authorize remedies that devastate targeted individuals or organizations before liability is established, they risk enabling the very abuses the Constitution was designed to prevent.

This petition warrants review because it presents an important and recurring question regarding the outer limits of federal equitable power and the constitutional sequence of adjudication before punishment.

Lower courts have applied these principles with varying formulations, yet this Court has not articulated a clear boundary governing enterprise-wide receiverships under § 78u(d)(5). Although no square circuit

conflict has yet emerged, the absence of a clear boundary invites continued doctrinal divergence.

Clarification is necessary to ensure that equitable remedies remain tethered to historical practice, statutory authorization, and the structural safeguards that separate adjudication from coercion. Granting certiorari would provide that guidance.

For these reasons, amici curiae respectfully urge the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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