

No. 25-465

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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  
OF UNITED STATES CONGRESS MEMBERS  
REP. ANNA PAULINA LUNA  
AND REP. LAUREN BOEBERT  
IN SUPPORT OF PETITIONER**

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## INTEREST OF THE AMICI CURIAE

The Amici Curiae<sup>1</sup>, **REP. ANNA PAULINA LUNA (FLA. 13TH DIST.) AND REP. LAUREN BOEBERT (COL. 4TH DIST.)** are Members of the United States House of Representatives who submit this brief to address the representational and democratic consequences of expansive equitable remedies applied in federal enforcement actions. The House of Representatives occupies a unique constitutional role as the branch most directly accountable to the people. Its Members are elected to represent the interests of constituents whose livelihoods, property, and economic security are affected by federal law and its execution.

This case raises concerns that extend beyond the named parties. Enterprise-wide receiverships do not operate in isolation. When imposed, they can abruptly terminate employment, suspend payroll, freeze vendor payments, impair retirement interests, and disrupt small businesses and local economies. These effects are borne by workers, retirees, customers, and counterparties who are not accused of wrongdoing, are not parties to the enforcement action, and receive no notice or opportunity to be heard before their interests are harmed.

The Members appearing here do not seek to evaluate the merits of the underlying enforcement claims,

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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.

nor do they question the necessity of lawful regulation. Rather, they emphasize that remedies carrying such broad collateral consequences raise questions of democratic legitimacy and representation when applied without clear statutory authorization or procedural safeguards for affected third parties. Congress did not design equitable remedies to redistribute economic burdens across entire communities without statutory authorization.

The Constitution assigns Congress, and particularly the House, a central role in safeguarding the people from the unintended consequences of federal action. When judicially imposed remedies extend beyond resolving disputes between parties and instead reshape economic relationships affecting entire communities, the question becomes not only one of enforcement, but of representation. For that reason, the issues presented warrant this Court's review to ensure that equitable authority remains tethered to statutory limits.

The Members appearing here collectively represent approximately 660,000 constituents each and are constitutionally charged under Article I with legislating the scope of federal authority. When judicial remedies operate at legislative scale without express statutory authorization, Congress's institutional prerogative is implicated.



## SUMMARY OF ARGUMENT

This case presents a structural question: whether enterprise-wide equitable remedies may be imposed without clear statutory authorization when their effects extend beyond the defendant to non-parties who were neither heard nor represented. Asset preservation is one thing. Enterprise displacement is another. When equitable relief functions at legislative scale, the Constitution requires clarity from Congress.

Such consequences are not incidental under the Constitution, which permits the exercise of federal power only within boundaries established by Congress. Remedies that functionally redistribute economic burdens across entire enterprises resemble legislative acts in their effect, even when styled as equitable relief. When such remedies are imposed without clear congressional authorization, separation-of-powers concerns arise.

Nothing in this brief questions the authority of courts to preserve disputed assets pending adjudication; the concern arises only when preservation becomes structural displacement without statutory boundary.

Enterprise-wide remedies impose consequences on individuals who were neither heard nor represented. When equitable remedies operate at a scale that reshapes local economies and livelihoods, the absence of statutory guidance and procedural safeguards for affected third parties becomes a matter of constitutional concern.

This Court has repeatedly emphasized that equity follows the law and that judicial remedies must remain

tethered to statutory authorization and historical practice. Those principles protect not only defendants, but also the broader public whose interests Congress is charged with representing. Clarification from this Court would ensure that equitable authority does not expand in ways that bypass democratic accountability or impose severe consequences on individuals with no connection to the alleged misconduct.

The question presented is not the propriety of a single receivership. It is whether remedies with sweeping economic and social effects may be imposed without clear congressional authorization or meaningful consideration of the interests of those indirectly but profoundly affected. That question warrants this Court's review.



## ARGUMENTS

### **I. The Decision Below Expands Equitable Authority Beyond Historically Recognized Limits**

The Brief in Opposition characterizes receiverships as historically recognized equitable tools and frames the decision below as an application of settled discretion. That characterization underscores the need for this Court to clarify the limits of equitable authority under § 78u(d)(5), as lower courts are applying that authority without a uniform limiting principle. That framing obscures the controlling limitation this Court has repeatedly emphasized: federal equity is confined to

remedies traditionally available at the time of the Judiciary Act of 1789.<sup>2</sup>

This petition turns on a recurring question of remedial authority—what § 78u(d)(5) authorizes—not on a request for this Court to revisit tracing determinations or exercise case-specific discretion.

Federal courts are increasingly invoking § 78u(d)(5) to authorize enterprise-wide remedies untethered to adjudicated liability, yet no uniform limiting principle has been articulated.

Courts of appeals have articulated differing formulations of the scope and limiting principles governing enterprise-wide receiverships under § 78u(d)(5), yet this Court has not clarified the governing boundary or supplied a uniform rule.

Traditional equity permitted preservation of disputed property to ensure the effectiveness of final judgment. It did not authorize structural displacement of enterprise control prior to adjudication of liability. Where a remedy restructures rather than preserves, it functions as pre-adjudicatory punishment.

The concern is heightened where property characterized as “enterprise” assets includes interests held through trusts or other personal structures. When courts reclassify personal or trust-held assets as subject to enterprise-wide control prior to adjudication, the line between preservation of disputed proceeds and seizure of personal property becomes indistinct.

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<sup>2</sup> *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-19 (1999) (holding that federal courts may not create new equitable remedies beyond those traditionally available at the time of the Judiciary Act of 1789).

Equity has never permitted such recharacterization absent clear statutory authorization and adjudicated liability.<sup>3</sup>

The “received-or-benefited-from” rule adopted below contains no proportional limiting principle. Without a clear limiting principle, the statute becomes a vehicle for structural remedies of undefined scope. If minimal benefit suffices to subject an entire enterprise to receivership control, then the doctrinal distinction between tainted and untainted property recognized by this Court becomes illusory.<sup>4</sup> That result is incompatible with the constitutional sequence that adjudication precedes punishment.

Section 78u(d)(5) contains no clear statement authorizing remedies of such sweeping economic consequence. When a remedy carries vast economic and structural consequence, clear congressional authorization is required.<sup>5</sup>

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<sup>3</sup> *Liu v. SEC*, 591 U.S. 71, 79-80 (2020) (equitable relief must not exceed traditional limits and must be consistent with historical practice).

<sup>4</sup> *Luis v. United States*, 578 U.S. 5, 12-14 (2016) (distinguishing between tainted and untainted assets and emphasizing that pretrial restraint implicates constitutional protections when it extends beyond traceable proceeds).

<sup>5</sup> *See West Virginia v. EPA*, 597 U.S. 697, 716-17 (2022) (requiring clear congressional authorization for agency actions of vast economic and political significance); *see also Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 n.3 (2024) (courts may not defer to executive interpretations that expand authority beyond statutory text).

When remedies impose effects comparable to legislation, Congress must speak clearly; courts may not infer such authority from general equitable language.

Clarification is warranted to define the outer boundary of equitable authority under § 78u(d)(5).

## **II. Enterprise-Wide Equitable Remedies Impose Legislative-Scale Consequences on Individuals Who Were Never Represented or Heard**

Federal equitable remedies are traditionally designed to resolve disputes between parties. They are not instruments for restructuring entire enterprises or reallocating economic burdens across communities. When courts impose enterprise-wide remedies, such as receiverships that displace management, freeze assets, and control ongoing operations, the practical consequences extend well beyond the defendant. Workers lose employment, vendors lose payment, retirees lose benefits, and local economies absorb the shock. These outcomes occur without notice, participation, or representation for those affected.

Remedies that operate at this scale resemble legislative acts, even when styled as judicial relief. They reshape economic relationships, determine who bears losses, and alter the distribution of resources across groups who never appeared before the court. When these outcomes follow from equitable orders rather than from statutes enacted by Congress, the resulting harm implicates democratic accountability as much as enforcement discretion.

Congress has not authorized courts to impose remedies that function as economic legislation affecting entire enterprises and their stakeholders. Equitable

authority has historically followed the law, not substituted for it. When remedies impose burdens comparable to those imposed by statutes, the absence of clear legislative authorization becomes constitutionally significant. The question is not whether equity may restrain unlawful conduct, but whether it may do so in ways that impose sweeping collateral consequences on individuals who never had a voice in the proceeding.

Judicial restraint here protects more than defendants. It protects workers, retirees, and small businesses whose interests Congress is charged with representing. It also preserves the distinction between adjudication and legislation that underlies the separation of powers. When courts resolve disputes between parties, they adjudicate. When they impose remedies that restructure enterprises and redistribute losses across communities, they risk assuming a role reserved to the political branches.

This Court has long recognized that equitable remedies must remain tethered to statutory authorization and historical practice. That limitation serves a democratic function. It ensures that decisions with broad social and economic consequences flow from elected representatives, rather than from case-specific judicial discretion. Clarification from this Court would reaffirm that principle.<sup>6</sup>

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<sup>6</sup> *Bangor Punta Operations, Inc. v. Bangor & Aroostook R.R. Co.*, 417 U.S. 703, 717-18 n.14 (1974) (explaining that “it is not the function of courts of equity to administer punishment”). *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) (reaffirming that courts must apply traditional equitable principles absent a contrary statutory directive).

### **III. Existing Procedural Frameworks Do Not Protect Non-Parties from the Collateral Effects of Enterprise-Wide Remedies**

Federal courts possess well-developed procedures to adjudicate disputes between parties. Those procedures presume that affected individuals are parties to the proceeding. Enterprise-wide equitable remedies depart from that premise. They impose immediate and substantial consequences on individuals and entities who are not parties to the proceeding and who have no procedural mechanism to protect their interests.

Workers, retirees, vendors, and customers are not parties to enforcement actions brought against corporate entities. They do not receive notice before payroll is suspended, contracts are frozen, or assets are liquidated. Nor do they have standing to challenge the scope of a receivership that disrupts their livelihoods. As a result, harms occur not as a consequence of adjudicated liability, but as a byproduct of remedial design. That gap in procedural protection is not incidental. It is structural.

Traditional doctrines of intervention and ancillary relief do not adequately address this problem. Intervention requires awareness of the proceeding and the ability to satisfy jurisdictional and prudential thresholds that many affected individuals cannot meet in time to prevent harm. By the time intervention is possible, the practical effects of an enterprise-wide remedy may already be irreversible. Procedural mechanisms that function after the fact do not substitute for representation at the moment when sweeping remedial decisions are made.

The absence of meaningful procedural protection for non-parties is particularly concerning when equitable remedies operate prospectively rather than merely preserving the status quo. Remedies that displace management, control cash flow, and authorize asset disposition do more than secure potential relief. They determine outcomes. For individuals whose employment, retirement security, or contractual rights depend on the continued operation of an enterprise, those determinations carry the same weight as final judgments, yet occur without adjudication as to them.

This Court has emphasized that equitable relief must remain consistent with historical practice and constitutional safeguards. Historically, equity resolved disputes between parties. It did not function as a mechanism for imposing broad economic consequences on absent individuals. Clarifying that distinction would not limit the courts' ability to enforce the law. It would ensure that enforcement does not proceed in a manner that effectively nullifies the procedural protections owed to those Congress exists to represent.

When judicial remedies produce legislative-scale effects without legislative authorization or procedural inclusion, the result is not merely harsh. It is unrepresentative. That condition undermines confidence in adjudication. Clarification from this Court would reaffirm that remedies affecting entire enterprises must remain constrained by the same principles of notice, representation, and accountability that govern the exercise of federal power elsewhere.

#### **IV. Only This Court Can Clarify the Limits of Remedies That Impose Broad Collateral Consequences Without Representation**

The representational concerns raised by enterprise-wide equitable remedies cannot be resolved through case-by-case adjustment in the lower courts. The absence of clear statutory guidance leaves trial courts to design remedies in real time, often under pressure to act quickly and with limited visibility into downstream effects. That dynamic produces inconsistency, uncertainty, and uneven protection for individuals who are not before the court but whose interests are nonetheless affected.

Congress has not enacted a statutory framework that addresses the representational consequences of enterprise-wide equitable remedies. Section 78u(d)(5) contains no express authorization for enterprise-wide restructuring authority. That silence is dispositive.

Absent such guidance, courts are left to fill the gap through discretionary orders that affect parties and non-parties alike. That gap is structural and requires clarification at the level of governing principle.

This Court is uniquely positioned to provide that clarification. By articulating the limits of equitable authority where remedies impose broad collateral effects on non-parties, the Court can ensure that enforcement remains consistent with democratic accountability and procedural fairness. Such guidance would not constrain lawful regulation. It would supply the clarity necessary for courts to design remedies that respect both statutory boundaries and the representational structure the Constitution establishes.

The question presented transcends any single enforcement action and concerns the need for uniform interpretation of § 78u(d)(5) across the federal courts. Absent clarification, lower courts will continue to develop divergent approaches to enterprise-wide equitable authority under the same statutory text, producing inconsistent applications of federal law.

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.

It implicates how federal power is exercised when remedies reach beyond defendants to affect entire communities. Without clarification from this Court, individuals who were never accused, never heard, and never represented will continue to bear the consequences of remedial decisions made without their participation. That condition is incompatible with the constitutional design in which Congress represents the people and courts adjudicate disputes.

Granting review would allow this Court to clarify the outer boundary of equitable authority under § 78u(d)(5). Remedies with legislative-scale effects require legislative authorization and procedural safeguards commensurate with their impact.



## CONCLUSION

This case presents a structural question about the limits of equitable authority. When remedies extend beyond preserving assets and instead restructure enter-

prises affecting non-parties, the constitutional allocation of power between Congress and the Judiciary is implicated.

When judicial remedies produce legislative-scale consequences without clear statutory authorization or procedural inclusion, that representational structure is strained.

Clarification by this Court would ensure that equitable authority remains tethered to statutory limits and that remedies affecting entire enterprises do not proceed absent clear congressional authorization. Such guidance would promote uniformity and preserve the constitutional distinction between adjudication and legislation.

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

Respectfully submitted,

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