No. 25-466

In the Supreme Court of the United States

ONGKARUCK SRIPETCH,
Petitioner,

v.

U.S. SECURITIES AND EXCHANGE COMMISSION,
Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF OF *AMICI CURIAE* PACIFIC LEGAL FOUNDATION, MATTHIAS O'MEARA, AND CHOICE ADVISORS, LLC, IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

Founded in 1973, **PACIFIC LEGAL FOUNDATION** is a nonprofit, tax-exempt corporation organized under the laws of the state of California for the purpose of engaging in litigation in matters affecting the public interest. PLF provides a voice in the courts for Americans who believe in limited government, private property rights, and individual freedom.

PLF is the most experienced public-interest legal organization defending the constitutional principle of separation of powers in the arena of administrative law. PLF's attorneys have participated as lead counsel in several cases involving the role of the Judiciary as an independent check on the Executive and Legislative Branches under the Constitution's Separation of Powers. *See, e.g.*, *Sackett v. EPA*, 566 U.S. 120 (2012) (challenging EPA's claimed authority to levy $75,000-per-day fines without a hearing); *Princess Awesome, LLC v. CBP*, No. 25-00078 (Ct. Int'l Trade filed Apr. 24, 2025) (challenging President's asserted power to impose tariffs under IEEPA).

* * *

MATTHIAS O'MEARA is a municipal-securities advisor who runs his one-man firm **CHOICE ADVISORS, LLC**. In 2018, Choice assisted two charter-school districts with successful bond issuances. Three years later, the Securities and Exchange Commission alleged that, in connection with those bond issuances, O'Meara and Choice had committed minor violations

[1] No party's counsel authored any part of this brief. No person or entity, other than Amici Curiae and their counsel, paid for the brief's preparation or submission.

of the Securities Exchange Act of 1934 and related rules. A district court granted the SEC's motion for summary judgment on strict-liability and negligence claims—but denied the SEC's motion on its lone scienter-based claim. The district court then acceded to the agency's request for *both* a civil monetary penalty pursuant to 15 U.S.C. § 78u(d)(3), *and* disgorgement pursuant to §§ 78u(d)(5) & (7). *See SEC v. Choice Advisors, LLC*, No. 21-cv-1669-JO-MSB, 2024 WL 4469095, at *5-7 (S.D. Cal. Oct. 7, 2024).

In *Liu v. SEC*, though, this Court held that an equitable award of disgorgement under § 78d(u)(5) is "permissible" only if it "is awarded for victims." 591 U.S. 71, 75 (2020). And in the SEC's case against O'Meara and Choice, it failed to identify any victims. Indeed, the SEC alleged no investor or client loss whatsoever. That's because there was none. And O'Meara and Choice's clients would have been surprised at the SEC's claims; they offered sworn testimony that Mr. O'Meara was instrumental to their successful bond issuances. Nonetheless, the SEC sought—and the district court ordered—punitive disgorgement. In effect, then, the district court subjected O'Meara and Choice to a double penalty.

They have appealed the district court's judgment, and the Ninth Circuit ordered the appeal to be held in abeyance pending this Court's ruling here. *See SEC v. Choice Advisors, LLC*, No. 24-6447 (9th Cir. Jan. 15, 2026).

Amici support Petitioner because, under this Court's decision in *Liu*, "disgorgement" is permitted only when there are "victims." 591 U.S. at 75. This Court should deny any attempt by the SEC to expand

the scope of this remedy and should therefore reverse the Ninth Circuit's judgment.

* * *

Amici submit this brief to emphasize the important separation-of-powers principles that call for this Court's careful reading of the Exchange Act. The Constitution delegated to Congress the power to make policy, including the nature and scope of remedies for (alleged) violations of federal law. It is the judiciary's responsibility to ensure that Executive Branch agencies do not escape their legislatively drawn boundaries. The SEC will no doubt argue the importance of enforcing securities laws—a point Amici do not contest—but "our system does not permit agencies to act unlawfully even in pursuit of desirable ends." *Ala. Ass'n of Realtors v. HHS*, 594 U.S. 758, 766 (2021) (per curiam).

It should go without saying, therefore, that courts must not help agencies to extend their powers beyond statutory and constitutional limits. But, for too long, agencies' expansive views of their powers were assisted by judicial deference and acquiescence—at the expense of the people's liberty and the rule of law.

SUMMARY OF THE ARGUMENT

This Court has consistently reaffirmed the central judgment of the Framers that the "ultimate purpose of th[e] separation of powers is to protect the liberty and security of the governed." *Metro. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272 (1991). The liberty and security of the governed are threatened when the carefully balanced scheme of the Framers is not enforced.

Here, the people's liberty is threatened by administrative agencies that consistently seek to escape the statutory bounds drawn by Congress. As this Court recognized, lower courts for decades have allowed the SEC to seek remedies beyond what the securities laws allow. This Court bears the solemn duty to keep the other branches—and the lower courts—in their lanes. It should reverse the appellate court's decision here and emphasize that administrative agencies are creatures of statute that have no authority whatsoever unless Congress provides it.

This brief will conclude with a few examples of statutory overreach that prejudiced PLF's clients, including Amici O'Meara and Choice.

ARGUMENT

I. The Constitution Delegates to Congress the Power to Establish Policy, Including Adopting Remedies for Statutory Violations

The Constitution divides the "powers of the . . . Federal Government into three defined categories, Legislative, Executive, and Judicial." *INS v. Chadha*, 462 U.S. 919, 951 (1983). And the Constitution "permits no delegation of those powers." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001). "Legislative power," therefore, "belongs to the legislative branch, and to no other." *FCC v. Consumers' Rsch.*, 606 U.S. 656, 672 (2025). The Constitution thus demands that the "important subjects" "be entirely regulated by the legislature itself." *Wayman v. Southard*, 23 U.S. 1, 43 (1825).

Among those important subjects is the authority of Executive Branch agencies. Because they are creatures of statute," federal agencies "possess only the

authority that Congress has provided." *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 117 (2022) (per curiam). They "literally ha[ve] no power to act . . . unless and until Congress confers power upon [them]." *La. Pub. Srvc. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). And an "agency may not confer power upon itself." *Ibid.*

Therefore, the SEC may not seek remedies beyond those allowed by statute. Previously, this Court allowed the SEC to obtain "disgorgement" pursuant to 15 U.S.C. § 78u(d)(5), which provided for "equitable" relief, with the provisos that (1) equity practice "authorized courts to strip wrongdoers of their ill-gotten gains" and (2) "courts restricted the remedy to an individual wrongdoer's net profits to be awarded for victims." *Liu*, 591 U.S. at 79. After *Liu*, Congress expressly added a "disgorgement" remedy to the Exchange Act, *see* 15 U.S.C. §§ 78u(d)(3)(A)(ii), (d)(7) (2021), and ensured that it remained an *equitable* remedy, *see* Pet. Br. 20-28. Therefore, this Court must aim to faithfully apply the legislature's intended meaning and not allow the SEC to use disgorgement as a non-equitable penalty remedy.

The Constitution's Separation of Powers also precludes courts, which exercise no part of the legislative power, from expanding remedies that conflict with the statutory text. *See, e.g.*, *Hernandez v. Mesa*, 589 U.S. 93, 101 (2020) (A "federal court's authority to recognize a damages remedy must rest at bottom on a statute enacted by Congress."); *cf. also Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 371 (2024) ("[W]hen the best reading of a statute is that it delegates discretionary authority to an agency, the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the

will of Congress subject to constitutional limits."). Courts for many years showed a "willingness to imply new remedies" in old statutes. *SEC v. Tex. Gulf Sulphur Co.*, 312 F. Supp. 77, 91 (S.D.N.Y. 1970), aff'd in part, rev'd in part, 446 F.2d 1301 (2d Cir. 1971). But those "heady days" are over. *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 75 (2001) (Scalia, J., concurring).

This Court should cabin attempts by the SEC and lower courts to arbitrarily impose remedies. Congress, of course, remains free to change remedies for securities violations, but it is Congress that is charged with this "important subject[]." *Wayman*, 23 U.S. at 43.

In the case of Amici O'Meara and Choice, they were subjected to unlawful double penalties because the SEC asked for—and the district court imposed—both a civil money penalty and punitive disgorgement. Amici do not quarrel with the SEC's authority to impose the securities laws—as written. But, because the district court approved the SEC's request for a double penalty contrary to the terms of the Exchange Act, they submit that they were denied due process, i.e., "fair notice of conduct that [wa]s forbidden," *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012), a requirement that applies to "the severity of the penalty," *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574 (1996). *See generally* Nathan S. Chapman & Michael W. McConnell, *Due Process as Separation of Powers*, 121 Yale L.J. 1672 (2012).

Amici thus urge the Court to keep in mind the Constitution's separation of powers that protect individual liberty against arbitrary government. *Freytag v. Comm'r*, 501 U.S. 868, 870 (1991) ("The leading

Framers of our Constitution viewed the principle of separation of powers as the central guarantee of a just government."). Keeping the Executive Branch within its bounds is a weighty obligation of this Court, because "[o]nce this Court reads a doubtful statute as granting the executive branch a given power, that power may prove almost impossible for Congress to retrieve." *Learning Res., Inc. v. Trump*, No. 24-1287, 2026 WL 477534, at *21 (U.S. Feb. 20, 2026) (Gorsuch J., concurring).

II. Administrative Agencies Seek to Aggrandize Power to the Themselves

While this Court may have "abandoned" the understanding that courts must provide extra-statutory remedies to carry out statutory purposes, *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001), agencies continue to seek additional relief, and courts continue to grant it. This phenomenon may not be surprising, for as Madison observed, "power is of an encroaching nature," *The Federalist No. 48*, at 332 (Madison) (J. Cooke ed., 1961), and as this Court noted, "hydraulic pressure inhere[s] within each of the separate Branches to exceed the outer limits of its power," *Chadha*, 462 U.S. at 951. But as Madison and this Court concluded, these attempts "must be resisted," "even [when the government seeks] to accomplish desirable objectives." *Ibid.*; *see The Federalist No. 48*, at 332 (stating that power "ought to be effectually restrained from passing the limits assigned to it").

The case before the Court is merely the latest example of Executive Branch overreach. *See, e.g. Learning Res.*, No. 24-1287, 2026 WL 477534 (U.S. Feb. 20, 2026) (rejecting President's claimed power to impose tariffs under IEEPA); *Ala. Ass'n of Realtors*,

594 U.S. at 760 (rejecting CDC's asserted authority to impose an eviction moratorium based "on a decades-old statute that authorizes it to implement measures like fumigation and pest extermination"); *AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67, 75 (2021) (unanimously rejecting FTC's reliance on 15 U.S.C. § 53(b), which authorizes permanent injunctions, to obtain monetary relief).

A. The SEC consistently seeks more power

At first the only statutory remedy available to the SEC in enforcement actions was an injunction barring future securities-law violations. *See Kokesh v. SEC*, 581 U.S. 455, 458 (2017). The Commission, though, "urged courts to order disgorgement as an exercise of their 'inherent equity power to grant relief ancillary to an injunction.'" *Ibid.* (citation omitted). Thus, "when the SEC began seeking this relief, it did so without any statutory authority." *Liu*, 591 U.S. at 96 (Thomas, J., dissenting). Nonetheless, the SEC found a "[j]udicial willingness to imply new remedies" in old statutes. *Tex. Gulf Sulphur*, 312 F. Supp. at 91. And courts for decades "awarded disgorgement in ways that test[ed] the bounds of equity practice" under § 78u(d)(5). *Liu*, 591 U.S. at 72.

The experiences of Amici O'Meara and Choice offer the Court additional context in which to consider the SEC's latest request to extend its authority. As noted above, the SEC obtained summary judgment against Amici O'Meara and Choice on negligence and strict-liability claims only. The SEC failed in its attempt to prove scienter-based liability. And it never even alleged that O'Meara and Choice's actions caused any investor or client harm. Nonetheless, the SEC asked the district court to impose both a civil-

money penalty and disgorgement, the latter for its *deterrent* effect. In its Motion for Entry of Final Judgment Imposing Remedial Relief, the SEC argued that without a disgorgement remedy for securities-law violations, the "deterrent effect of a Commission action would be greatly undermined." *SEC v. Choice Advisors, LLC*, No. 21-cv-1669-JO-MSB, Dkt. No. 90-1 at 16 (S.D. Cal. May 15, 2024) (quoting *SEC v. Rind*, 991 F.2d 1486, 1491 (9th Cir. 1993)).

The disgorgement award imposed against O'Meara and Choice, therefore, was a penalty. *See Austin v. United States*, 509 U.S. 602, 610 (1993) (A "civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment.") (internal quotation marks omitted).

According to this Court, however, "equity never 'lends its aid to enforce a forfeiture or penalty.'" *Liu*, 591 U.S. at 77 (quoting *Marshall v. Vicksburg*, 15 Wall. 146, 149 (1873)). Nonetheless, O'Meara and Choice have been subjected to an order of punitive disgorgement, in addition to a civil-monetary penalty.[2]

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[2] The SEC is seeking even more penalties—outside of court. After the district court issued its judgment, the SEC commenced a separate administrative proceeding to determine whether Mr. O'Meara should be forever barred from participating in the municipal-securities industry—the so-called career death penalty—and whether Choice will be censured. *See Choice Advisors, LLC*, SEC Admin. Proc. File No. 3-22250 (filed Oct. 15, 2024). The SEC could have asked the district court for that injunctive relief, but it chose instead to proceed in-house, where it acts as prosecutor, judge, and jury, and where it is all but certain to prevail. It is in that kangaroo forum where Mr. O'Meara's *livelihood*

"For decades, the Supreme Court has pushed back hard against the SEC's attempts to unilaterally rewrite the law," *Lorenzo v. SEC*, 872 F.3d 578, 601 (D.C. Cir. 2017) (Kavanaugh, J. dissenting), aff'd, 587 U.S. 71 (2019), and it must do so here again.

B. The SEC is not alone

The SEC's consistent efforts to increase its authority are matched by the efforts of agencies across the administrative state. Here, PLF discusses the experience of just a few of its clients who have suffered under arbitrary and extra-legal agency action.

Sackett v. EPA. PLF clients Michael and Chantell Sackett's attempt to build a house in a residential neighborhood was thwarted for years by the EPA and Army Corps of Engineers, which threatened the Sacketts with $75,000-per-day fines but refused to provide even a hearing to determine whether the Sacketts were, as claimed, violating the Clean Water Act. This Court unanimously rejected the agencies' claimed authority. *Sackett v. EPA*, 566 U.S. 120 (2012); *see id.* at 132 (Alito, J., concurring) (noting the "notoriously unclear" reach of the Clean Water Act and describing the EPA's exorbitant daily fines, without providing a hearing, as "unthinkable" in "a Nation that values due process, not to mention private property").

3484, Inc. & 3486, Inc. v. NLRB*; *Hiran Management, Inc. v. NLRB. Congress enacted the National Labor Relations Act in 1935. Under Section 10(c) of the Act, the NLRB may "requir[e] [employers] to cease and desist from [an] unfair labor practice, and

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will be determined. PLF represents O'Meara and Choice in their challenge to this unlawful proceeding. *See O'Meara v. SEC*, No. 25-1470 (10th Cir. filed Dec. 23, 2025).

to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter." 29 U.S.C. § 160(c). An award for, e.g., back pay, is referred to as "make whole" relief. Between 1935 and 2022, the NLRB recognized that Section 10(c) authorized only equitable make-whole relief. *See, e.g.*, *Freeman Decorating Co.*, 288 N.L.R.B. 1235, 1235 n.2 (May 31, 1988) (NLRB's acknowledging that it "does not award tort remedies").

But in December 2022, the NLRB announced that it would "revisit" and "clarify" its previous decisions that "ha[d] not always made clear that [the Board] define[s] make-whole relief to include direct or foreseeable pecuniary harms resulting from . . . unfair labor practices." *Thryv, Inc.*, 372 N.L.R.B. No. 22, 2022 WL 17974951, at *9, *10 (Dec. 13, 2022), vacated in part on other grounds, *Thryv Inc. v. NLRB*, 102 F.4th 727 (5th Cir. 2024). But elsewhere in that order, the NLRB admitted that it intended to "'*modify* its traditional make-whole remedy in all pending and future cases to include relief for *consequential* damages . . . .'" *Id.* at *9 n.8 (emphasis added) (citation omitted).

PLF represented Hiran Management, Inc. in the Fifth Circuit and 3484, Inc. & 3486, Inc. in the Tenth Circuit to challenge the NLRB's reinterpretation of its remedy power. The Fifth Circuit agreed with PLF that the NLRB's "articulation of 'foreseeable pecuniary harms' . . . is a form of legal damages," which are not allowed under Section 10(c) of the NLRA. *Hiran Mgmt., Inc. v. NLRB*, 157 F.4th 719, 728, 728-29 (5th Cir. 2025).

A divided panel of the Tenth Circuit, however, punted. The NLRB had ordered 3486, Inc. to compensate its former employees "for any . . . direct or foreseeable pecuniary harms." *3484, Inc. & 3486, Inc. v. NLRB*, 137 F.4th 1093, 1115 (10th Cir. 2025). Because 3486 did not raise this issue with the NLRB, the court could not consider the issue unless the NLRB's decision "'clearly demonstrate[d] the Board exceeded its statutory authority.'" *Ibid.* (citation omitted). According to the majority panel, it could not determine whether the NLRB had acted in excess of its statutory authority because the NLRB had not conducted its remedies hearing, *ibid.*, which generally takes place after judicial review of a Board decision. According to the panel, the Board so far "ha[d] merely stated a general proposition," but had not imposed a "specific remedy." *Ibid.* As Judge Eid pointed out in dissent, however, the problem with the Board's remedy was "not its *amount*, but rather its *form*." *Id.* at 1121 n.3 (Eid, J., concurring in part and dissenting in part). And the Board's ordered remedy "clearly transcend[ed] [its] [statutory] limitation because it constitutes a form of legal damages—no matter the ultimate amount." *Ibid.* As a result, 3486, Inc. must now wait for the NLRB to impose a specific amount of consequential damages and then go through the appellate process all over again before it may challenge the NLRB's recently discovered authority to award consequential damages.

* * *

This Court is once again called to keep administrative agencies to their lawful remit. Regulated parties, like the public at large, are entitled to a non-arbitrary set of rules. Amici urge the Court to emphatically remind the agencies and lower courts that attempts to

aggrandize power "must be resisted," "even [when the government seeks] to accomplish desirable objectives." *Chadha*, 462 U.S. at 951.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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