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SCOTUS Urged to End SEC Use of Legal Remedies Not Prescribed by Statute

Liu v SEC

WASHINGTON, D.C., December 23, 2019 – An [amicus brief](#) filed today by the New Civil Liberties Alliance (NCLA) urges the U.S. Supreme Court to reverse a Ninth Circuit decision that endorses the Security and Exchange Commission’s routine use of abusive legal remedies not authorized by relevant federal statutes.

In [Liu v. Securities and Exchange Commission](#), the high court is asked whether the SEC may pursue “disgorgement” as equitable relief for securities law violations even though the court has previously determined that disgorgement is a “penalty,” and the statutory remedies do not authorize such penalties.

“Little by little, focusing on bad actors rather than the law,” began NCLA senior litigation counsel John Vecchione, “the SEC and other federal agencies have steadily worked to expand their power and authority far beyond what elected lawmakers in Congress have allowed.

“In the particular case of the SEC, it has pursued a deliberate, bootstrapping strategy over several decades that cultivates judges’ outrage over defendants’ misconduct at the expense of temperance and the rule of law,” Vecchione continued.

The brief identifies a 1970 decision by the Second Circuit in *SEC v. Texas Gulf Sulphur Co.* that has served as a foundational precedent for the acquisitive agency’s campaign to wield “often crippling and constitutionally questionable disgorgements as a cudgel against defendants.

“The SEC took that decision and has since charged ahead, despite a 1994 high court admonition in *Central Bank of Denver* making clear that statutory text strictly governs the scope of agency authority, and that such authority cannot be implied. The SEC has many statutory powers including civil penalties, and can even pursue disgorgement administratively, but unless Congress acts it should be held to the statutes on the books.

“Even more recent high court decisions have signaled a fresh willingness to rein in unelected regulators’ usurpations of Congress’s sole lawmaking authority, and NCLA hopes the justices will seize the opportunity presented by *Liu* to strike a more definitive blow against the administrative state,” Vecchione concluded.

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[NCLA](#) is a nonprofit civil rights organization founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.