ORAL ARGUMENT NOT YET SCHEDULED
No. 23-5129

In the United States Court of Appeals for the District of Columbia Circuit

ALPINE SECURITIES CORPORATION,
Plaintiff-Appellant,

SCOTTSDALE CAPITAL ADVISORS CORPORATION,
Plaintiff,

v.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.,
Defendant-Appellee,

UNITED STATES OF AMERICA,
Intervenor.

On Appeal from the United States District Court
for the District of Columbia, 1:23-cv-1506-BAH

[CORRECTED] BRIEF OF THE NEW CIVIL LIBERTIES ALLIANCE AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT

Russell G. Ryan (*Counsel of Record*)
Margaret A. Little
Andrew Morris
NEW CIVIL LIBERTIES ALLIANCE
1225 19TH ST. NW, SUITE 450
Washington, DC 20036
(202) 869-5210
russ.ryan@ncla.legal

Counsel for Amicus Curiae

CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES PURSUANT TO CIRCUIT RULE 28(a)(1)

A. *Parties and Amici*. All parties appearing before the district court and in this Court are listed on the first page of the Opening Brief of Plaintiff-Appellant. *Amicus curiae* the New Civil Liberties Alliance is aware that the Municipal Securities Rulemaking Board has also filed a brief as *amicus curiae* in support of neither party in this case.

B. *Ruling Under Review*. Plaintiff-Appellant is challenging the district court's June 7, 2023 Order and Memorandum Opinion denying its Renewed Emergency Motion for Preliminary Injunction and Temporary Restraining Order, which are reproduced at App. 385-416.

C. *Related Cases*. *Amicus curiae* the New Civil Liberties Alliance is aware of no related cases other than as described on the first page of the Opening Brief of Plaintiff-Appellant.

September 6, 2023

/s/ Russell G. Ryan
Russell G. Ryan

Counsel for Amicus Curiae
New Civil Liberties Alliance

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, undersigned counsel states that *amicus curiae* the New Civil Liberties Alliance is a nonprofit organization under the laws of the District of Columbia. It has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

September 6, 2023

/s/ Russell G. Ryan
Russell G. Ryan

Counsel for Amicus Curiae
New Civil Liberties Alliance

STATEMENT REGARDING CONSENT TO FILE AND SEPARATE BRIEFING

All parties have consented to the filing of this brief.* *Amicus curiae* the New Civil Liberties Alliance filed its notice of its intent to participate in this case as *amicus curiae* on August 30, 2023. Pursuant to Circuit Rule 29(d), NCLA certifies that a separate brief is necessary to provide an in-depth explanation of the near-complete absence of direction and supervision exercised by the U.S. Securities and Exchange Commission over the enforcement and disciplinary functions of Defendant-Appellee the Financial Industry Regulatory Authority and the constitutional implications of that near-complete absence in light of the district court's holding that FINRA is a private actor rather than a governmental actor.

* NCLA states that no counsel for any party authored this brief in whole or in part and that no person or entity, other than NCLA and its counsel, made a monetary contribution intended to fund the preparation and submission of this brief. *See* Fed. R. App. P. 29(c)(5).

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GLOSSARY

FINRA	Financial Industry Regulatory Authority
SEC	U.S. Securities and Exchange Commission
NCLA	New Civil Liberties Alliance

INTEREST OF AMICUS CURIAE

The New Civil Liberties Alliance ("NCLA") is a nonpartisan, nonprofit civil rights organization devoted to defending constitutional freedoms from the administrative state's depredations. The "civil liberties" of the organization's name include rights at least as old as the U.S. Constitution itself: jury trial, due process of law, the right to live under laws made by the nation's elected lawmakers through constitutionally prescribed channels, and the right to have executive power exercised only by actors accountable to the President, many of which are at stake in this appeal. Yet these selfsame rights are also very contemporary—and in dire need of renewed vindication—because Congress, federal administrative agencies, and even sometimes the courts have neglected them for so long.

NCLA defends civil liberties primarily by asserting constitutional constraints on the administrative state. Although Americans still enjoy the shell of their Republic, there has developed within it a very different sort of government—a type, in fact, that the Constitution was designed to prevent. This unconstitutional administrative state is the focus of NCLA's concern.

NCLA is particularly disturbed when the government empowers private actors with vast executive discretion and muscle to enforce federal law through investigation, prosecution, and punishment, but does not ensure that these private actors are answerable to the President. That situation exists here, where Congress and the U.S. Securities and Exchange Commission ("SEC") have empowered Defendant-Appellee Financial Industry Regulatory Authority ("FINRA") to investigate, prosecute, and punish securities brokers and firms for violating federal securities laws and rules without any meaningful direction or supervision of those functions even by SEC, much less the President. As explained herein, this empowerment of private law enforcement without close supervision by accountable Executive Branch officers violates Article II of the Constitution, deeply conflicts with our constitutional design, and presents a grave threat to civil liberties.

INTRODUCTION

The purpose of this brief is to underscore the absence of any meaningful, real-time SEC direction and supervision of Defendant-Appellee FINRA when FINRA exercises the quintessential executive powers of investigating, prosecuting, and punishing alleged violators of

federal securities laws and rules. That void stands in stark contrast with SEC's more meaningful direction and supervision of FINRA's less prolific exercises of legislative power through rulemaking. The distinction is critical here because FINRA's exercise of core executive power—not its exercise of legislative power—is the focus of Plaintiff-Appellant's constitutional claims against FINRA. Thus, even if FINRA's rulemaking powers pass constitutional muster—a point as to which this brief takes no position other than to say it is irrelevant—FINRA's enforcement powers do not.

As explained herein, FINRA investigates, fines, and strips the chosen livelihoods of hundreds of securities brokers and firms each year—discretionary exercises of core executive power typically performed by governmental actors—without any accountability to the President and without any meaningful direction, supervision, or surveillance by any presidentially appointed governmental officer. FINRA's actions thereby contravene Article II of the Constitution.

ARGUMENT

I. Relevant Background

FINRA is an ostensibly private nonprofit corporation that regulates the securities brokerage industry subject to SEC oversight. App. 389-90. As the only SEC-registered "national securities association," FINRA wields vast legislative, executive, and adjudicatory powers over more than 3,000 broker-dealer firms and more than 600,000 individual brokers (also known as "registered representatives") operating within the securities industry. *See* FINRA, *Statistics*, www.finra.org/media-center/statistics (hereinafter "FINRA Statistics"). Federal law requires most broker-dealer firms to become members of FINRA and thus to consent to FINRA's regulatory jurisdiction. 15 U.S.C. § 78o(b)(8); *see also* SEC Press Rel. No. 2023-154, *SEC Adopts Amendments to Exemption From National Securities Association Membership* (Aug. 23, 2023) (further narrowing the thin sliver of broker-dealer firms exempt from mandatory FINRA membership). Federal law also requires FINRA to maintain rules to ensure that when its member firms or their brokers violate federal securities law or rules, they "shall be appropriately disciplined … by expulsion, suspension, limitation of activities, functions,

and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction." *Id.* § 78o-3(b)(7).[1]

Although not an official agency or department of the federal government, FINRA exercises significant legislative power by promulgating rules applicable to the securities brokerage industry, most of which become legally binding on regulated parties only upon SEC approval after public notice and comment. *Id.* § 78s(b); *see also* App. 390-91. In a typical year, FINRA promulgates a few dozen new rules that affect its member firms and their brokers. *See* FINRA, *Rule Filings*,

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[1] Federal courts have characterized comparable sanctions in attorney-discipline cases as "quasi-criminal" in nature, *e.g.*, *In re Ruffalo*, 390 U.S. 544, 551 (1968); *In re Finn*, No. 22-11092, 2023 WL 5193517, at *2 (5th Cir. Aug. 14, 2023) (quoting *United States v. Brown*, 72 F.3d 25, 29 (5th Cir. 1995))—*i.e.*, sufficiently severe to require proof of misconduct by "clear and convincing evidence," *see, e.g.*, *In re Liotti*, 667 F.3d 419, 426 (4th Cir. 2011); *Crowe v. Smith*, 261 F.3d 558, 563 (5th Cir. 2001) (citing *In re Thalheim*, 853 F.2d 383, 389 n.9 (5th Cir. 1988)); *In re Fisher*, 179 F.2d 361, 369 (7th Cir. 1950); *accord* American Bar Ass'n, STANDARDS FOR IMPOSING LAWYER SANCTIONS § 1.3. FINRA imposes disciplinary sanctions using the threadbare "preponderance of evidence" standard, which this Court has aptly described as the "rock-bottom" lightest evidentiary burden typically applied in mine-run civil cases. *Charlton v. FTC*, 543 F.2d 903, 907 (D.C. Cir. 1976). But Appellants have not raised this as an issue, so the Court need not address it.

finra.org/rules-guidance/rule-filings (listing new rule proposals filed with SEC). Each year FINRA also conducts more than two thousand examinations of securities firms and brokers for compliance with federal securities laws and rules. *See* FINRA, *Preparing for a FINRA Cycle Examination,* finra.org/sites/default/files/Education/p038336.pdf.

FINRA also exercises vast executive power by investigating, prosecuting, and punishing securities brokers and firms who violate federal securities laws and rules, including both SEC's and FINRA's rules. *See* App. 391-92. In this role, using its 350-person enforcement staff, FINRA investigates over a thousand member firms and brokers each year, filing formal disciplinary charges against several hundred or more. *See* FINRA Statistics. In a typical year, FINRA imposes anywhere from $50 million to $150 million in aggregate fines and restitution while suspending, barring, or expelling from the securities industry more than 500 brokers—far more than SEC itself does—and occasionally entire firms. *Id*.

II. THE "PRIVATE NONDELEGATION DOCTRINE"

In a series of cases involving the nominally private operator of the Amtrak train system, this Court has "detailed extensively why private

entities cannot wield the coercive power of government." *Ass'n of Am. R.R.s v. Dep't of Transp.*, 821 F.3d 19, 37 (D.C. Cir. 2016) ("Amtrak III") (citing and reaffirming relevant holding of *Ass'n of Am. R.R.s v. Dep't of Transp.*, 721 F.3d 666, 670-74 (D.C. Cir. 2013) ("Amtrak I")). Other circuits generally agree. "A cardinal constitutional principle is that federal power can be wielded only by the federal government. Private entities may do so only if they are subordinate to an agency." *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 53 F.4th 869, 872 (5th Cir. 2022) (citing *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 537 (1935); *Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936); *Currin v. Wallace*, 306 U.S. 1, 15–16 (1939); and *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 399 (1940)). "If it were otherwise—if people outside government could wield the government's power—then the government's promised accountability to the people would be an illusion." *Id.* at 880 (citing THE FEDERALIST No. 51); *see also Dep't of Transp. v. Ass'n of Am. R.R.s*, 575 U.S. 43, 62 (2015) ("Amtrak II") (Alito, J., concurring) ("When it comes to private entities, … there is not even a fig leaf of constitutional justification" for delegating regulatory power).

Starting from this foundational principle, courts have developed something called the "private nondelegation doctrine," which three Supreme Court justices recently signaled the need to fortify through an appropriate future case. *Texas v. Comm'r of Internal Revenue*, 142 S. Ct. 1308 (2022) (statement of Justice Alito, joined by Justices Thomas and Gorsuch, respecting denial of certiorari). *Amicus curiae* leaves to the parties a full briefing of the history and contours of this developing doctrine and will avoid repetition here. In short, however, the doctrine generally forbids delegation of government power to a private actor unless the private actor operates subordinately—or "as an aid"—to a governmental actor and subject to that governmental actor's "pervasive surveillance and authority." *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 388 (1940); *see also Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936); *Oklahoma v. United States*, 62 F.4th 221, 231 (6th Cir. 2023), *reh'g denied*, 2023 WL 3815095 at *1 (6th Cir. May 18, 2023); *Nat'l Horsemen's Benevolent and Protective Ass'n v. Black*, 53 F.4th 869, 881 (5th Cir. 2022).

Cases in this area have often focused on the participation of private actors in promulgating rules that bind a particular industry rather than

on the private actors' investigation and punishment of rulebreakers. *See, e.g.*, *Sunshine Anthracite Coal*, 310 U.S. 381; *Carter Coal*, 298 U.S. 238; *Amtrak I*, 721 F.3d 666. Indeed, in those cases it appears likely that the relevant private actors lacked any enforcement powers at all. In other cases, constitutional scrutiny of the private entity's enforcement powers was premature because the private actor was only recently created and had not yet taken steps to establish its enforcement system, much less to investigate anyone. *Oklahoma v. United States*, 62 F.4th at 231-33; *Nat'l Horsemen's Benevolent and Protective Ass'n*, 53 F.4th at 890 n.37.[2]

Here, by contrast, FINRA's long-established, prolific, and punitive enforcement regime is front and center—and ripe for constitutional scrutiny in the context of a pending enforcement case. Some courts in

[2] In one such case, the court in dictum helpfully suggested certain oversight techniques that the relevant federal agency might adopt to minimize private nondelegation concerns. For example, the court hypothesized that the agency "could issue rules protecting covered persons from overbroad subpoenas or onerous searches;" "could require that the [subordinate private regulator] provide a suspect with a full adversary proceeding with free counsel;" and "could require that the [subordinate private regulator] meet a burden of production before bringing a lawsuit or preclear the decision with the [governmental agency]." *Oklahoma v. United States*, 62 F.4th at 231. Notably, SEC applies none of these hypothetical oversight techniques to FINRA enforcement proceedings.

other circuits have held FINRA's enforcement regime constitutional. But *amicus curiae* respectfully submits that those courts have taken far too much comfort from SEC's required pre-approval of FINRA rulemaking and opportunity to conduct after-the-fact review of FINRA disciplinary sanctions, while failing to appreciate the lack of any meaningful SEC oversight of FINRA's enforcement cases at any of the many critical discretionary decision points earlier in those cases.

III. FINRA Exercises Vast Executive Power with Virtually No Meaningful SEC Supervision or Direction

The district court concluded that FINRA is not a "state actor," and thus is not bound by most constitutional constraints when it investigates, prosecutes, and punishes alleged wrongdoers. App. 407. But in doing so, the district court unwittingly demonstrated how FINRA exercises those vast executive powers without any meaningful governmental supervision and control, thus violating Article II of the Constitution and the private nondelegation doctrine. For example, the district court correctly noted that all officers and board members of FINRA are private citizens who are not appointed (nor, with limited exceptions, removable) by any

governmental body. App. 389.[3] As the district court also noted, FINRA unilaterally sets its own budget and staff salaries, and receives no governmental funding. *Id.*

As nominally private actors, FINRA and its staff are also largely exempt from many of the basic checks, balances, and transparency requirements designed to protect individuals from overzealous governmental coercion and punishment. For example, FINRA and its staff are not constrained by the Administrative Procedure Act, the Sunshine Act, the Freedom of Information Act, the Advisory Committee Act, the Equal Access to Justice Act, or countless other laws applicable to traditional government regulators. And, as best *amicus curiae* can determine, despite wielding vast legislative and executive power, none of FINRA's trustees, officers, or employees is required, like their governmental counterparts, to take an oath to "support and defend the Constitution" and to "bear true faith and allegiance to the same." 5 U.S.C. § 3331.

[3] Likewise, all of FINRA's nearly 4,000 other employees are also private citizens cloaked with no governmental appointments.

The district court acknowledged that in at least one respect—FINRA's exercise of legislative power through rulemaking—FINRA is subject to some degree of direct, real-time SEC supervision. In particular, with minor exceptions not relevant here, FINRA rules do not become effective or binding on regulated parties unless and until SEC pre-approves them, and SEC retains plenary authority to amend those rules on its own. App. 390-91, 407-08; 15 U.S.C. § 78s(b), (c). Similar types of governmental supervision of private lawmaking through agency pre-approval have likewise been deemed sufficient to remove any constitutional infirmity, especially where the private entity is otherwise subject to the agency's "pervasive surveillance and authority." *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 388, 399 (1940); *see also Amtrak I*, 721 F.3d at 671 (quoting *Adkins*), *vacated and remanded on other grounds*, 575 U.S. 43 (2015).[4]

[4] Even this SEC pre-approval process for FINRA rulemaking somewhat overstates SEC's degree of direction and supervision. Many (and likely most) FINRA rules are reviewed and approved not by SEC's presidentially appointed commissioners but rather only by SEC staff acting pursuant to delegated authority. *See generally* 17 CFR 200.30-3(a)(12) and (57)-(59).

But the district court also effectively demonstrated that SEC exercises *no* comparable pre-approval or pervasive surveillance when FINRA exercises its quintessentially *executive* power to investigate, prosecute, and punish alleged violators of federal securities laws and rules. The court nevertheless found FINRA's enforcement function to be sufficiently subordinate to SEC because SEC can—at least in theory—review any FINRA enforcement sanction upon the conclusion of FINRA's often years-long enforcement and disciplinary process, including all hearings and internal appeals. App. 408-09; 15 U.S.C. § 78s(d), (e). For nearly all of the hundreds of brokers and firms investigated, prosecuted, and sanctioned by FINRA, however, that theoretical, after-the-fact SEC review *never* happens, so FINRA's enforcement cases against them are never subjected to any SEC surveillance or oversight whatsoever.

As the district court correctly observed, for example, FINRA alone "determines which cases to investigate and when to file a complaint," App. 403; *accord* App. 391 ("investigations are done at FINRA's discretion, without any influence from the SEC or other branch of government"). To complete the picture, moreover, FINRA alone—with no pre-approval or direction from SEC—also makes all discretionary

executive decisions. For example, FINRA decides which brokers and firms to burden with investigative demands for documents and testimony (noncompliance with which can result in summary suspension from the industry, *see* FINRA Rules 8210 and 9552); how burdensome those demands will be; which brokers and firms will be charged with wrongdoing; what statutory and rule violations will be charged against them; whether to accept a settlement offer and on what terms; and what fines and other sanctions will be imposed. *See generally* Jessica Hopper, *Working on the Front Lines of Investor Protection: How a FINRA Enforcement Action Becomes a FINRA Enforcement Action*, FINRA NewsBlog (June 4, 2020), www.finra.org/media-center/blog/working-on-the-front-lines-of-investor-protection-how-an-enforcement-action-becomes-an-enforcement-action (then-Head of FINRA Enforcement describing the entire FINRA enforcement process, making no mention of SEC involvement or supervision).

In a typical FINRA enforcement case, *all* of these discretionary, career-altering, and often punitive executive decisions are made *solely* by the private citizens who work for and manage FINRA. Those decisions are made with no input, direction, or supervision from anyone at SEC,

much less by the presidentially appointed and Senate-confirmed SEC commissioners, who are the only constitutionally appointed Principal Officers of the government anywhere within sight at FINRA. Indeed, with exceedingly rare exceptions, SEC commissioners are entirely oblivious to who FINRA is investigating or prosecuting unless and until FINRA concludes a matter by imposing a disciplinary sanction. Even then, the commissioners as a practical matter get involved only in the tiny fraction of FINRA enforcement cases that not only run their entire course through FINRA's internal processes, including investigation, disciplinary hearing, and internal FINRA appeals—all of which can take several years and cost far more in attorney's fees than the likely FINRA fine—but also are thereafter formally appealed to SEC's commissioners pursuant to Exchange Act § 19(d)(2), 15 U.S.C. § 78s(d)(2).[5]

This is especially problematic given the practical realities of FINRA's enforcement docket. First among those realities is that, of the more than 1,000 cases FINRA investigates in any given year, very few

[5] In theory, SEC can also review a final FINRA sanction "on its own motion" even if no sanctioned respondent appeals, 15 U.S.C. § 78s(d)(2), but *amicus curiae* is not aware of SEC ever having done so and believes such cases, if any exist, are exceptionally rare.

run their full course to reach an appeal to SEC's commissioners. *Compare* FINRA, *Regulatory Actions and Corporate Financing Review 2017-2022*, www.finra.org/media-center/statistics (reporting per-year enforcement case totals ranging from a low of 743 in 2022 to a high of 1,316 in 2017) *with* FINRA, *Comment Letter to SEC, Nov. 24, 2015*, at 2 (reporting that over the preceding three-year period, only 32 FINRA cases were appealed to SEC), *and* SEC, *Report on Administrative Proceedings for the Period October 1, 2022 through March 31, 2023*, SEC Exchange Act Rel. No. 97400 at 5 (Apr. 28, 2023) (reporting only 38 total appeals docketed from FINRA and all other securities industry self-regulatory organizations *combined*, including the Public Company Accounting Oversight Board, during the period from October 1, 2021 through March 31, 2023).

Nearly all other FINRA enforcement cases end in settlements (or defaults), and thus are *never* reviewed by *anyone* at SEC, much less the commissioners themselves through a formal appeal. *See, e.g.*, Jeff Kern and Rena Andoh, *FINRA Enforcement Actions—Who's Afraid of the Big Bad Wolf?*, Insights, Vol 30, No. 9 at 8, 10 (Sept. 2016) www.sheppardmullin.com/media/article/1558_Kern%20and%20Andoh%

20INSIGHTS-2016-09-30.pdf ("the overwhelming majority of FINRA enforcement actions settle"); James D. Bedsole and Michael R. Gaico, *Five Strategies for Effectively Trying FINRA Disciplinary Cases*, www.americanbar.org/groups/litigation/committees/securities/practice/2019/five-strategies-effectively-trying-finra-disciplinary-cases/ ("most investigations by FINRA's Department of Enforcement … are resolved through settle[ment]"). Stated otherwise, the vast majority of FINRA's enforcement investigations and disciplinary sanctions (including tens of millions of dollars in aggregate monetary fines and hundreds of lifetime industry bars imposed each and every year) never receive even after-the-fact review by SEC's commissioners.[6]

[6] Adding insult to injury, even those rare brokers and firms that appeal to SEC's commissioners after persevering through years of costly and stressful FINRA enforcement proceedings often wait several *additional* years before SEC decides their appeal. *See, e.g., In re Scottsdale Capital Advisors Corp.*, SEC Exchange Act Rel. No. 93052 (September 17, 2021) (setting aside final FINRA sanctions order imposed more than three years earlier); *In re Southeast Investments, N.C., Inc.*, SEC Exchange Act Rel. No. 97954 (July 20, 2023) (20th consecutive SEC order unilaterally extending agency's deadline to decide fully briefed appeal from FINRA final sanction order imposed in May 2019). Throughout all those years of investigation, prosecution, and appeal, most accused brokers remain largely unemployable in the securities industry (or, to only a slightly lesser extent, anywhere else).

As a practical result, of the many hundreds of enforcement cases that private citizens at FINRA investigate and prosecute each year—and the hundreds of resulting fines, industry bars, disrupted careers, and damaged reputations—almost none is ever directed, supervised, surveilled, or even reviewed after the fact by any constitutionally appointed officer of the U.S. government. Indeed, even SEC's after-the-fact appellate review of a tiny percentage of FINRA final disciplinary orders each year hardly constitutes "pervasive surveillance and authority" over FINRA's enforcement regime—no more than this Court's appellate review of a tiny percentage of SEC enforcement orders each year under 15 U.S.C. § 78y(a) could plausibly be characterized as "pervasive surveillance and authority" over SEC's enforcement regime.

* * * *

FINRA simultaneously convinced the district court that it is not a state actor subject to constitutional limitations, yet that, as a private actor enforcing the law, it is subject to SEC's pervasive surveillance and supervisory authority. FINRA's game of "heads I win, tails you lose" is

constitutionally untenable. FINRA cannot have it both ways: It cannot evade the Constitution's appointment, removal, due process, and jury trial requirements by claiming to be a private actor free of government entanglement, while at the same time evading the equally important constitutional requirement that private actors be subject to the "pervasive surveillance and authority" of governmental officers when they wield vast governmental power typically exercised by government officials. If, as the district court correctly acknowledged, SEC plays no meaningful role in directing, supervising, or surveilling the overwhelming majority of FINRA enforcement investigations and prosecutions, it necessarily follows that the private actors at FINRA are exercising core executive power in violation of Article II of the Constitution and the private nondelegation doctrine.

CONCLUSION

The district court's order dismissing the case should be reversed.

Respectfully submitted,

/s/ Russell G. Ryan
Russell G. Ryan
Counsel of Record
Margaret A. Little
Andrew Morris
NEW CIVIL LIBERTIES ALLIANCE
1225 19th St. NW, Suite 450
Washington, DC 20036
(202) 869-5210
russ.ryan@ncla.legal

Dated: September 6, 2023

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of the Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B)(i) because it contains fewer than 6,500 words. This brief also complies with the typeface and type-style requirements of the Federal Rule of Appellate Procedure because it was prepared using Microsoft Word 2016 in Century Schoolbook 14-point font, a proportionally spaced typeface.

September 6, 2023

/s/ Russell G. Ryan
Russell G. Ryan

Counsel for Amicus Curiae
New Civil Liberties Alliance

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2023, I electronically filed the foregoing [corrected] brief with the Clerk of Court using the CM/ECF system which sent notification of such filing to all counsel of record.

/s/ Russell G. Ryan
Russell G. Ryan

Counsel for Amicus Curiae
New Civil Liberties Alliance