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NCLA Asks Supreme Court to Stop FINRA’s Illegal ‘Private’ Enforcement Regime

Alpine Securities Corporation v. Financial Industry Regulatory Authority, United States of America

Washington, DC (March 27, 2025) – The New Civil Liberties Alliance has filed an *amicus curiae* [brief](#) in *Alpine Securities Corporation v. Financial Industry Regulatory Authority* (FINRA) asking the U.S. Supreme Court to enjoin FINRA’s illegal expedited enforcement proceeding against Alpine Securities Corporation. FINRA openly admits to being a private corporation, yet it investigates, fines, and strips the livelihoods of hundreds of securities brokers and firms every year without any accountability to the President or meaningful oversight by a presidentially appointed federal officer. The Justices should enjoin the FINRA prosecution that irreparably harms Alpine Securities pending judicial review to prevent this unconstitutional use and abuse of executive power.

FINRA regulates the securities brokerage industry subject to rulemaking oversight by the Securities and Exchange Commission (SEC), but the agency does not provide any meaningful direction or supervision of FINRA’s *enforcement* activities. A panel of the U.S. Court of Appeals for the D.C. Circuit wrongly declined to fully enjoin FINRA’s enforcement proceeding against Alpine Securities pending review of the constitutionality of its enforcement regime. If FINRA is a private entity as it claims to be, and not a “state actor,” then it is not bound by most constitutional restraints when it investigates, prosecutes, and punishes alleged wrongdoers. But that would mean FINRA violates both Article II of the Constitution, which prohibits empowering private law enforcement without close Executive Branch supervision, and the “private nondelegation doctrine,” a vital judicial principle that reserves binding federal power for the federal government alone.

NCLA persuaded the Supreme Court in [SEC v. Michelle Cochran](#) (2023) that illegitimate enforcement proceedings led by illegitimate decisionmakers injure their targets “here and now,” which is impossible to remedy once the proceeding is over. The *Cochran* ruling followed decades of Supreme Court precedent that constitutional injury—including empowering private parties with vast prosecutorial discretion and power over fellow citizens—constitutes irreparable harm. The D.C. Circuit panel failed to recognize these precedents and fully enjoin FINRA’s proceeding against Alpine Securities, an error the Justices should correct. Denying injunctions to Alpine Securities and parties in similar situations would allow government agencies or their surrogates like FINRA to harm targets with to-be-vacated proceedings despite their dubious legality.

NCLA released the following statements:

“Michelle Cochran was able to vindicate her constitutional rights at the Supreme Court because a Fifth Circuit panel recognized her ‘here-and-now injury’ that is irreparable because a ‘proceeding that has already happened cannot be undone.’ The Supreme Court should recognize the logical and precedential force of that holding here.”
— **Peggy Little, Senior Litigation Counsel, NCLA**

“The D.C. Circuit allowed FINRA’s constitutionally dubious enforcement process to go forward against Alpine Securities as the court considers whether that process is even constitutional. As a result, the process will likely

run its entire course against Alpine before the court ever decides whether it's constitutional, at which point Alpine's harm in being subjected to the process will be complete and irreparable. The Supreme Court should hit the pause button to avoid that irreparable harm."

— **Russ Ryan, Senior Litigation Counsel, NCLA**

"FINRA cannot have it both ways, evading the Constitution's appointments, removal, due process, and jury trial requirements by claiming to be a mere private actor while simultaneously wielding vast, unsupervised governmental power."

— **Mark Chenoweth, President, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group 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.

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