

[Securities Regulation Daily Wrap Up, ENFORCEMENT—U.S.: Amici support narrow reading of disgorgement remedy, \(Nov. 20, 2025\)](#)

Securities Regulation Daily Wrap Up

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By Anne Sherry, J.D.

Among other amici, the Cato Institute argues that a recent disgorgement order has implications for separation of powers and due process.

Several amici curiae are urging the Supreme Court to review a case expanding the bounds of the SEC's disgorgement remedy. The [petitioner argues](#) that the Ninth Circuit erred in ordering disgorgement without requiring the SEC to show pecuniary harm to investors. The Cato Institute, the California Alternative Investments Association, and a trio of appellants in a Ninth Circuit case that is pending on rehearing all argue in separate amicus briefs that the Supreme Court should grant certiorari (Brief of The Cato Institute as Amicus Curiae Supporting Petitioner, [Sripetch v. SEC](#), No. 25-466 (Nov. 17, 2025)).

Cato brief. The Cato Institute writes that the question presented in the petition for certiorari—whether the SEC may seek equitable disgorgement without showing pecuniary harm—is by itself an important question and the subject of a circuit split, justifying a grant of certiorari.

But Cato says that the case's importance is even deeper than this. The case implicates issues of separation of powers, fair notice, and fair enforcement. Interpreting “disgorgement” broadly would unlawfully delegate legislative power to executive officials, Cato asserts. It would mean that the SEC could not only decide whether to seek a specific remedy in a specific case—a constitutionally valid exercise of its discretion—but could also determine the scope of its own power to seek disgorgement and the federal court's power to award it.

Allowing an amorphous construction of the disgorgement remedy also runs afoul of due process: a statute must provide fair notice not only of the conduct that is prohibited, but the consequences of violating that prohibition. Cato argues that this principle also prevents arbitrary and targeted enforcement.

“Latter-day concerns about politically motivated targeting by government officials make this principle particularly important,” Cato writes, citing news articles from 2025 and 2021 about concerns over the respective administrations targeting opposing groups. The group also cites research finding that partisan affiliation influences the severity of enforcement.

CalALTs. The [brief](#) of the California Alternative Investments Association emphasizes the effect that the circuit split will have on promoters and managers in novel, emerging asset classes. CalALTs notes that the Ninth Circuit's reasoning applies even to cases not involving fraud or scienter, such as registration violations. This may penalize those who deal with emerging assets that lack regulatory clarity, with the side effect of chilling innovation.

The brief argues that the Ninth Circuit's holding cannot be reconciled with *Kokesh* and *Liu*. “The Ninth Circuit's conclusion that disgorgement can be imposed based on ill-gotten gains untethered to victim losses would return the remedy to the pre-*Kokesh* state of affairs,” CalALTs writes.

The decoupling of the disgorgement remedy from pecuniary harm has resulted in awards that are punitive, CalALTs avers. The brief says that for example, registration violations will almost never cause pecuniary harm, but under the rule in the First and Ninth Circuits, the defendant may have to give up his entire compensation. “This draconian result is patently punitive, untethered as it is to any harm actually suffered by victims.”

Barry. CalALTs cited the action against Brenda Barry, Caleb Moody, and Eric Cannon as an example of a scienter-less registration violation in which the Ninth Circuit ordered disgorgement of the defendants' sales

commissions despite no pecuniary harm to investors. These defendants are appellants in a case pending on rehearing before the Ninth Circuit, and they have also filed an [amicus brief](#) urging the Supreme Court to grant certiorari.

The *Barry* amici submit that in their case, the Ninth Circuit justified disgorgement based on “an unprecedented and expansive theory of harm—the ‘loss of the time value of money.’” The court went on to affirm a substantial disgorgement award without quantifying any actual opportunity costs or requiring the SEC to prove that the alleged violations caused the purported harm.

This outcome, the amici say, “abandons *Liu*’s emphasis on concrete victim restitution ... and instead permits disgorgement as a *de facto* penalty for technical violations of federal securities laws.” By allowing the SEC to extract large penalties even where no investors are unwhole, and there is no causal link between the violation and the gains flouts *Liu*’s statement that disgorgement cannot simply deprive a wrongdoer of ill-gotten gains for the benefit of the public at large.

The case is [No. 25-466](#).

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