

AMICUS CURIAE

In Re SEC v. Unicoïn et al

Black Wallet Limited

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Prepared for the
Government Blockchain
Association

The elements in this report
are for the use of the court
only and shall not
constitute legal advice.

2026

Table of Cases

- *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012)
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- *Upton v. SEC* is 75 F.3d 92 (2d Cir. 1996)
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- *West Virginia v. Environmental Protection Agency*, 597 U.S. 697 (2022) or 142 S. Ct. 2587 (2022).

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- 12 U.S.C. §§ 5901–5916 (Genius Act);
- US Constitution Art I
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- Equal Access to Justice Act, (1980) **Public Law 96-481, 94 Stat.**
- **Cryptocurrency and Exchange Act of 2024.** (Model) (UN)

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- Sewell, David; Hashmall, Alison; Atamain, Narine & Shamray, Abby (2006). “OCC Proposes Framework for Stablecoin: A New Era for Digital Assets.” Freshfields at [https://blog.freshfields.us/post/102mln8/occ-proposes-framework-for-stablecoins-a-new-era-for-digital-assets#:~:text=The%20OCC's%20proposed%20rule%20\(the.%2C%20capital%2C%20and%20risk%20management.](https://blog.freshfields.us/post/102mln8/occ-proposes-framework-for-stablecoins-a-new-era-for-digital-assets#:~:text=The%20OCC's%20proposed%20rule%20(the.%2C%20capital%2C%20and%20risk%20management.)
- Staff (2026). “US Office of the Comptroller of Currency Proposes Comprehensive Supervisory Framework for Payment Stablecoins Under GENIUS Act.” Sidley at <https://www.sidley.com/en/insights/newsupdates/2026/03/us-occ-proposes-comprehensive-supervisory-framework-for-payment-stablecoins-under-genius-act.>
- Smithmyer, Christopher (2025). “Instability” Elite Exclusivity Detroit.
- Carroll, Audrey; Grimaldi, Matthew; Wicker, Heidi; & Witherspoon, Thomas (2026). “OCC Finalizes Amendments to Affirm the Authority of National Trust Banks to Engage in Non-Fiduciary Activities.” Stinson at <https://www.stinson.com/newsroom-publications-occ-finalizes-amendments-to-national-bank-chartering-rule-to-affirm-the-authority-of-national-trust-banks-to-engage-in-non-fiduciary->

Interest In Amicus Curiae

The Amici in the matter are members of the digital asset community; government members of committees; groups and appointments within the digital asset and web3 community; members of the Government Blockchain Association; members of affiliates of the Government Blockchain Association, corporations affiliated with the Government Blockchain Association; corporations within the digital asset community; and unaffiliated individuals who have expressed a clear interest in this matter but are unable to, either financially or publicly, state their opinion or the opinion of the groups they represent in this case due to conflicts of interest. In this matter, all affiliated reviewers and authors are 1.) United States Corporations, 2.) Citizens of the United States, or 3.) actors who are working in conjunction with participants in category 1 or 2 in good faith for the economy of the United States and/or the business interests of companies operated in the United States.

Our interest in this case, as an association, is derived from the operational methodology used to bring this case against Unicoïn. As this is a pure interest in protecting the security of the field, which is the 7th largest economy in the world and promoting the interest of encouraging digital asset companies and holdings to establish residency in the United States to protect the economy, we will be avoiding direct discussion of the merits of the case, except where to highlight a procedural point, and focusing directly on the errors in the methodology to bring this case. If the field is to flourish in the United States, then companies must be able to have faith in both the law and in the handling of their cases; unfortunately, in this matter there are egregious missteps which create a modicum of uncertainty which is dangerous to the industries faith in the laws of the United States.

Summary of the Argument

The Securities and Exchange Commission's ("Commission") enforcement action against Unicoïn, Inc. represents a significant expansion of administrative authority that bypasses fundamental constitutional safeguards and legislative boundaries. By pursuing punitive sanctions through the civil court system, the Commission seeks to impose what are essentially criminal penalties while avoiding the rigorous burden of proof required in criminal proceedings. This "regulation by enforcement" strategy denies the Defendants due process by failing to provide fair notice of what conduct is prohibited, particularly as the Commission applies 90-year-old statutes to novel digital assets in a manner that is inconsistent and unpredictable.

Furthermore, the Commission's attempt to assert jurisdiction over the digital asset industry violates the Major Questions Doctrine as established in *West Virginia v. EPA*. The regulation of the cryptocurrency market is a matter of vast economic and political significance currently being debated by Congress through multiple legislative vehicles. In the absence of a clear congressional statement authorizing the Commission to oversee these specific assets, the agency cannot unilaterally seize regulatory power. Such overreach not only stifles domestic innovation but also

undermines the separation of powers by allowing an executive agency to perform a legislative function reserved for the people's elected representatives.

Argument Point A: Evasion of the Criminal Burden of Proof Via Civil Enforcement

The Commission's pursuit of Unicoin, Inc. represents a troubling trend in federal enforcement where agencies utilize the civil court system to achieve punitive ends while bypassing the constitutional protections afforded to criminal defendants. By bringing this action in a civil forum, the Commission benefits from a lower "preponderance of the evidence" standard of proof, yet seeks remedies—including permanent officer and director bars and massive disgorgement—that are functionally equivalent to criminal sanctions. This strategy allows the government to effectively "prosecute" the Promoting Defendants without the "beyond a reasonable doubt" burden of proof or the procedural rigors of the Sixth Amendment.¹

The Supreme Court has increasingly recognized that the remedies sought by the SEC are not merely remedial but are intended to punish. In *Gabelli v. SEC*, 568 U.S. 442 (2013), the Court noted that civil penalties are "intended to punish, and label defendants wrongdoers," rather than simply restore the status quo.² The Court warned against allowing the government to pursue such "death penalty" civil sanctions indefinitely, noting that the "central purpose of making the Government's right to pursue [penalties]... is to provide repose" to the defendant. By labeling the Promoting Defendants as "fraudsters" in a civil complaint while seeking life-altering career bans, the SEC is attempting to inflict criminal-grade stigma through a civil lens.³

The punitive nature of the SEC's toolkit was further solidified in *Kokesh v. SEC*, 581 U.S. 455 (2017). In a unanimous opinion, Justice Sotomayor clarified that "SEC disgorgement is a penalty" because it is "imposed by the courts as a consequence for violating a public law" and is "intended to deter, and thus punish, the wrongdoer."⁴ The Court emphasized that a sanction is a penalty when it is "not merely for a private wrong, but a wrong to the public." Because the Commission's prayer for relief seeks to "punish" the individual defendants for alleged public harm, it is an exercise of the state's police power that should be held to the highest evidentiary standards.⁵

Moreover, the Commission frequently employs a "parallel investigation" strategy, using its civil subpoena power to gather evidence that is subsequently shared with criminal authorities, or vice versa. This creates a risk of "civil discovery as a cloak for criminal investigation." When the SEC uses the threat of civil litigation to compel testimony or document production—where the Fifth Amendment right against self-incrimination is often practically chilled by the threat of an "adverse

¹ *Gabelli v. SEC*, 568 U.S. 442 (2013).

² *Id.*

³ *Id.*

⁴ *Kokesh v. SEC*, 581 U.S. 455

⁵ *Id.*

inference" in civil court—it effectively circumvents the protections of the Grand Jury system and the higher burden of proof inherent in the criminal justice system.⁶

The Supreme Court's decision in *Liu v. SEC*, 140 S. Ct. 1936 (2020), attempted to rein in this overreach by stressing that the SEC's equitable power to seek disgorgement is strictly limited to "net profits" and must be "awarded for victims."⁷ Despite this, the Commission continues to seek gross-proceeds-based disgorgement that acts as a fine. Amici argue that when the SEC seeks disgorgement that "exceeds the bounds of equity" by failing to deduct legitimate business expenses, the remedy ceases to be civil and becomes a "forfeiture," a traditionally criminal concept that requires the government to prove its case beyond a reasonable doubt.⁸

This strategic choice of forum creates an unconstitutional "evidentiary arbitrage." The Commission is able to use the Promoting Defendants' internal communications, which were obtained under the lower civil threshold of "relevance," to argue for "scienter"—a state of mind that mirrors criminal intent. By doing so, the SEC seeks to brand the Defendants with the mark of a criminal conviction without ever having to meet the burden of proof that the American legal tradition demands for such a severe deprivation of liberty and property.

Ultimately, the Court must view this action not as a routine regulatory matter, but as a punitive exercise of government power. As the Court observed in *Liu*, "the government's power to take away a person's property as a penalty for a crime is ancient and well-settled," but that power must be exercised through the front door of the criminal justice system, not the side door of civil enforcement.⁹ To allow the SEC to continue this practice is to permit the slow erosion of the "beyond a reasonable doubt" standard, the bedrock of our judicial system.

Argument Point B: Violation of the “Major Question Doctrine” West Virginia v. EPA)

The Commission's assertion of authority over the digital asset market further ignores the established statutory domain of the Office of the Comptroller of the Currency (OCC). Traditionally, the OCC has held exclusive jurisdiction over financial instruments that are "financial in nature" or serve as a means of payment—functions that define a significant portion of the digital asset ecosystem.¹⁰ By attempting to reclassify these instruments as "investment contracts," the SEC is not only overstepping its own bounds but is also actively displacing the regulatory framework of

⁶ *Id.*

⁷ *Liu v. SEC*, 140 S. Ct. 1936 (2020),

⁸ *Id.*

⁹ See *Kokesh*, *supra*; see also *Liu*, *Supra*.

¹⁰ Sewell, David; Hashmall, Alison; Atamain, Narine & Shamray, Abby (2006). "OCC Proposes Framwrok for StablecoinL A New Era for Digital Assets." Freshfields at [https://blog.freshfields.us/post/102mln8/occ-proposes-framework-for-stablecoins-a-new-era-for-digital-assets#:~:text=The%20OCC's%20proposed%20rule%20\(the,%2C%20capital%2C%20and%20risk%20management](https://blog.freshfields.us/post/102mln8/occ-proposes-framework-for-stablecoins-a-new-era-for-digital-assets#:~:text=The%20OCC's%20proposed%20rule%20(the,%2C%20capital%2C%20and%20risk%20management).

the National Bank Act, which empowers the OCC to oversee activities that constitute the "business of banking."¹¹

The legislative landscape has shifted decisively in favor of OCC oversight for digital assets that function as payment or settlement tools. With the enactment of the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act) on July 18, 2025, Congress established a federal statutory framework specifically for "payment stablecoins."¹² This Act explicitly designates the OCC as a primary federal regulator, authorizing it to supervise the issuance, reserve standards, and redemption obligations of digital assets designed for payment.¹³ The SEC's attempt to regulate these same assets through litigation contradicts this clear congressional intent to house payment-related digital innovation within the federal banking system.

The OCC's authority in this area is not a new development but a logical extension of its historical mandate. In Interpretive Letter No. 1170 (2020) and subsequent 2025 updates, the OCC confirmed that national banks may provide digital asset custody and serve as intermediaries in the exchange of payments and securities.¹⁴ The OCC reasoned that because banks are "the recognized intermediaries... in the financial markets and the payment systems," they possess the unique expertise required to manage the risks associated with these novel financial mechanisms. When a digital asset functions as a stablecoin or a utility for financial settlement, it falls squarely within the "business of banking" under 12 U.S.C. 24 (Seventh).¹⁵

Furthermore, the OCC's Notice of Proposed Rulemaking (NPRM) issued in February 2026 implementing the GENIUS Act creates a comprehensive supervisory framework that the SEC's "regulation by enforcement" approach completely ignores.¹⁶ This framework establishes bright-line rules for capital adequacy, reserve diversification, and a "two-business-day redemption"

¹¹ Staff (2026). "US Office of the Comptroller of Currency Proposes Comprehensive Supervisory Framework for Payment Stablecoins Under GENIUS Act." Sidley at <https://www.sidley.com/en/insights/newsupdates/2026/03/us-occ-proposes-comprehensive-supervisory-framework-for-payment-stablecoins-under-genius-act>. (Hereinafter Sidley).

¹² 12 U.S.C. §§ 5901–5916 (Genius Act); See Also Smithmyer, Christopher (2025). "Instability" Elite Exclusivity Detroit.

¹³ *Id.*

¹⁴ Carroll, Audrey; Grimaldi, Matthew; Wicker, Heidi; & Witherspoon, Thomas (2026). "OCC Finalizes Amendments to Affirm the Authority of Nations Trust Banks to Engage in Non-Fiduciary Activities." Stinson at <https://www.stinson.com/newsroom-publications-occ-finalizes-amendments-to-national-bank-chartering-rule-to-affirm-the-authority-of-national-trust-banks-to-engage-in-non-fiduciary-activities#:~:text=1170%2C%20issued%20on%20July%202022,Interpretive%20Letter%20No..>

¹⁵ Staff (2026). "OCC Clarifies that a Letter of Non-Objection is required before engaging in Certain Activities Involving Virtual Currency." Compliance Alliance at <https://compliancealliance.com/news-events/newsletter/december-2021-newsletters/occ-clarifies-that-a-letter-of-non-objection-is-required-before-engaging-in-certain-activities-involving-virtual-currency/>. As it appears that matters such as a bank holding cryptographic keys falls under the OCC, there is a strong argument that the field should follow suit, rather than be divided as fiefdoms across several fields.

¹⁶ Staff (2025). "OCC Authorizes National Banks to Conduct Riskless Principle Crypto Asset Transactions: Legal Implications for Financial Institutions." Bulldog Law at <https://www.thebulldog.law/understanding-new-banking-powers-digital-asset-markets-compliance#:~:text=The%20OCC's%20interpretive%20letter%20relies,on%20the%20business%20of%20banking..>

requirement at par.¹⁷ Unlike the SEC's retroactive and unpredictable litigation strategy, the OCC's regime provides the "fair notice" required by due process, allowing market participants to operate with the regulatory certainty necessary for institutional stability.¹⁸

By targeting assets of a financial nature—particularly those like Unicorn that may involve backing by real-world assets or provide a means of value transfer—the SEC is encroaching on a specialized regulatory space where Congress has already spoken. In *West Virginia v. EPA*, the Court noted that an agency cannot claim power that "Congress has conspicuously declined to enact."¹⁹ Here, Congress has not only declined to give the SEC authority over payment coins; it has proactively granted that authority to the OCC.²⁰ The SEC cannot use the *Howey* test as a "backdoor" to regulate payment systems that the law has assigned to banking regulators.²¹

Ultimately, the right to control digital assets that serve financial or payment functions resides with the OCC to ensure the safety and soundness of the national financial system.²² Forcing these assets into the SEC's "disclosure-based" securities regime—which is designed for speculative capital formation, not for stable payment instruments—creates a "regulatory mismatch" that threatens to destabilize the very markets the Commission claims to protect.²³ This Court should recognize that the Commission's pursuit of this matter is a trespass into the OCC's specialized jurisdiction, further violating the separation of powers.²⁴

Argument C: Regulation by Enforcement Is a Due Process and Civil Rights Violation

The Commission's strategy of "regulation by enforcement" constitutes a fundamental violation of the Due Process Clause of the Fifth Amendment.²⁵ Due process requires that the law provide "fair notice" to a person of ordinary intelligence of what is prohibited before the state may seek to deprive them of property or liberty. In the digital asset space, the Commission has conspicuously failed to promulgate clear rules or provide a registration path, instead choosing to announce its "policy" through retroactive litigation. As the Second Circuit held in *Upton v. SEC*, 75 F.3d 92 (2d Cir. 1996), the Commission cannot sanction a party for conduct when there is a "substantial uncertainty" as to the meaning of the underlying regulation, noting that "the Commission may not

¹⁷ *Id.* See Also Carroll et al, *supra*.

¹⁸ Bulldog Law, *supra*.

¹⁹ *West Virginia v. Environmental Protection Agency*, 597 U.S. 697 (2022) or 142 S. Ct. 2587 (2022).

²⁰ Perkins, Joseph; Sandoval, Ignacio; Stapleton, Caroline & Reisenburg, Nathaniel (2026). "OCC Proposes Rule to Implement Genius Act." Orrick at <https://www.orrick.com/en/Insights/2026/02/OCC-Proposes-Rule-to-Implement-the-GENIUS-Act>

²¹ Staff, OCC (2026) "Genius Act Regulations: Notice of Proposed Rulemaking." OCC Bulletin 2026-3 at <https://www.occ.treas.gov/news-issuances/bulletins/2026/bulletin-2026-3.html#:~:text=The%20OCC%20will%20have%20regulatory,the%20OCC's%20regulatory%20or%20enforcement.> See Also *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) (Hyperlinked for Utility)

²² See *Howey*, *Supra*; See Also 12 U.S.C. §§ 5901–5916.

²³ Sewell et al, *supra*.

²⁴ *West Virginia*, *supra*; See also US Const Art I, Art II, Art III, See *Generally* Federalist No. 47.

²⁵ US Const, Amend V.

use an adjudicatory proceeding to impose a new rule of conduct, which it has not previously given notice of."²⁶

This lack of clarity is exacerbated by the Commission's inconsistent application of the *Howey* test. The Supreme Court established in *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012), that "[a] fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of what conduct is prohibited."²⁷ The Commission has spent years issuing conflicting public statements, "no-action" letters that lack the force of law, and varying court filings that create a "moving target" for compliance. To punish the Defendants for failing to register a novel instrument under these conditions is to punish them for the Commission's own failure to provide a transparent regulatory road map.²⁸

Furthermore, this arbitrary and discriminatory enforcement constitutes a violation of the Defendants' civil rights. Under the principles of equal protection and the right to be free from "arbitrary and capricious" government action, the Commission's selective targeting of specific digital asset projects—while ignoring others with identical structures—suggests an enforcement regime based on whim rather than law. When a government agency utilizes its vast resources to target individuals through "vague and standardless" interpretations of the law, it engages in an abuse of power that infringes upon the civil liberties of the accused. The right to engage in lawful business and the right to property are protected civil interests that the Commission has impermissibly burdened.

Because this enforcement action represents an egregious infringement on the Defendants' constitutional and civil rights, the Court should award the Defendants their reasonable attorney's fees and court costs. Under the Equal Access to Justice Act (EAJA) and the principles surrounding civil rights litigation, when the government's position is not "substantially justified" and results in a violation of constitutional due process, the burden of defense costs should shift to the state.²⁹ As noted in *Pierce v. Underwood*, 487 U.S. 552 (1988), the EAJA was designed to prevent the government from using its superior resources to "harass" or "intimidate" citizens into complying with unauthorized and unconstitutional agency demands.³⁰

The Commission has intentionally created a "compliance vacuum" where registration is practically impossible, yet it seeks to bankrupt the Defendants for their "failure" to register. This "catch-22" is the hallmark of an oppressive administrative state. The Supreme Court in *United States v. Salerno*, 481 U.S. 739 (1987), reaffirmed that the Due Process Clause is intended to prevent the government from abusing its power or "employing it as an instrument of oppression."³¹ By forcing

²⁶ *Upton v. SEC* is 75 F.3d 92 (2d Cir. 1996)

²⁷ *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012).

²⁸ *Id.*

²⁹ Equal Access to Justice Act, (1980) **Public Law 96-481, 94 Stat. 2321** (Hyperlinked for Utility)

³⁰ *Pierce v. Underwood*, 487 U.S. 552 (1988).

³¹ *United States v. Salerno*, 481 U.S. 739 (1987), See Also US Constitution Amend XIV.

the Defendants to defend themselves against shifting and retroactive legal theories, the Commission is utilizing the judicial process as a tool of financial exhaustion rather than a search for justice.³²

Amici respectfully submit that "regulation by enforcement" is anathema to the American judicial tradition. A government that refuses to tell its citizens what the law is until after it has sued them is not a government of laws, but a government of men. This Court should reject the Commission's attempt to legislate through the judiciary and ensure that the Defendants are made whole for the costs incurred in defending their constitutional right to fair notice and equal treatment under the law.

Conclusion and Repose

The Commission's enforcement action against Unicoïn, Inc. is an archetypal example of administrative overreach that threatens the constitutional separation of powers. By bypassing the criminal justice system to seek punitive sanctions, the Commission avoids the "beyond a reasonable doubt" burden of proof while simultaneously violating the Major Questions Doctrine. The regulation of digital assets is a matter of profound national significance currently reserved for congressional debate and, increasingly, the specialized jurisdiction of the OCC. To allow the Commission to unilaterally expand its domain through retroactive litigation would be to grant an executive agency the power to legislate from the shadows of the courtroom.

Furthermore, the Commission's "regulation by enforcement" strategy is a direct assault on the Fifth Amendment's guarantee of due process and the fundamental civil rights of the Defendants. By failing to provide a clear registration path or a coherent legal standard before initiating this action, the Commission has denied the Defendants fair notice, transforming the judicial process into an instrument of financial and reputational attrition. This arbitrary exercise of power not only stifles economic innovation but also undermines the public's trust in the fair administration of the federal securities laws.

Accordingly, Amici Curiae respectfully suggest that this Court grant the Defendants' motion to dismiss with prejudice, or in the alternative, stay the proceedings until Congress provides clear statutory authorization regarding digital asset jurisdiction. Furthermore, in light of the significant due process and civil rights violations inherent in this "regulation by enforcement" approach, the Court should award the Defendants their reasonable attorney's fees and court costs under the Equal Access to Justice Act. Such relief is necessary to deter future agency overreach and to preserve the integrity of the constitutional boundaries that protect all American citizens from arbitrary government action. Further, the court should declare that all digital assets are under the control of the Office of the Comptroller of Currencies and that they should proceed with regulation

³² Salerno, *supra*.

under the UN Model Law on Digital Assets and Exchanges until such as time as the United States congress can pass a law providing clarification as to how the OCC should operate in this matter.³³

We thank you for your time in this matter.

³³ **Cryptocurrency and Exchange Act of 2024.** (Model)

https://www.google.com/url?sa=i&source=web&rct=j&url=https://gbaglobal.org/blog/2024/04/15/gba-releases-cryptocurrency-digital-asset-model-law/&ved=2ahUKEwjiLb8z-OTAxUXFlkFHci8NdMQy_kOegQIARAB&opi=89978449&cd&psig=AOvVaw3HIJ3zeJvoO_AgUkR-JYna&ust=1775922225407000.