No. 25-____

IN THE SUPREME COURT OF THE UNITED STATES

TIMOTHY L. BARTON, Petitioner,
v.
SECURITIES AND EXCHANGE COMMISSION, Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF OF AMICI CURIAE THE BITCOIN FOUNDATION, THE NEAR PROTOCOL FOUNDATION, THE AVALANCHE FOUNDATION, AND THE BLOCKCHAIN POLICY INITIATIVE

(In Support of Petition for Writ of Certiorari)

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Rule 37.6 Statement
No counsel for a party authored this brief in whole or in part, and no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief.
All statements herein represent the independent views of Amicus Curiae.

I. INTEREST OF AMICI CURIAE

The Bitcoin Foundation, the NEAR Protocol Foundation, the Avalanche Foundation, and the Blockchain Policy Initiative ("BPI") respectfully submit this brief in support of the petition for a writ of certiorari. Together, amici represent the core of the emerging decentralized-technology sector in the United States and abroad. Their work—developing open-source protocols, securing digital-asset networks, and formulating responsible policy frameworks—depends on transparent, predictable, and constitutionally grounded regulation.[1]

Each organization exists to advance lawful innovation built on **rule-of-law stability**. They rely on courts to interpret statutes as written and on agencies to act only under clear congressional authorization.[2] When agencies claim "equitable" enforcement powers unmoored from statute and when courts assist those agencies through receiverships or injunctions beyond their jurisdiction, the result is legal uncertainty that chills innovation, repels investment, and drives technological development offshore.[3]

Because blockchain systems are decentralized by design, their participants cannot rely on informal assurances or negotiated discretion. They require **objective legal standards**—standards that only Congress can enact and courts can interpret.[4] When administrative agencies improvise remedies through equity, they create a shadow code of conduct no developer can read in advance. In such an environment, entrepreneurs cannot distinguish lawful innovation from inadvertent violation, and

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[1] *See* Bitcoin Foundation Mission Statement (2012). **PIN:** ¶ 1. *(Committed to promoting the lawful use of decentralized digital currency through education and advocacy.)*
[2] U.S. Const. art. I §§ 1–8; art. II § 3. (Legislative power vested in Congress; execution limited to faithful application of enacted law.)
[3] *Cf. Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 332 (1999). **PIN:** 332. *(Federal courts may not expand equitable remedies beyond historical limits.)*
[4] *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391–392 (2024). **PIN:** 391–392. *(Agencies may not invent authority where Congress is silent.)*

the promise of decentralized transparency yields to the opacity of administrative discretion.

Amici's interest therefore parallels that of the public and the press: to preserve a constitutional order in which **law precedes enforcement** and **enforcement follows law**.[5] If equity becomes execution and agency "guidance" replaces statutory clarity, the nation's most promising technological sector will face regulation by retroactive inference rather than by public rulemaking. That outcome undermines not only the First Amendment's protection of code as speech but also the separation of powers that sustains all economic liberty.[6]

The blockchain industry stands at a constitutional crossroads similar to those faced by earlier generations of innovators. Railroads in the nineteenth century and telecommunications firms in the twentieth century flourished only when legal boundaries were defined, knowable, and enforced by neutral courts.[7] Today's innovators seek the same assurance: that agencies will regulate through statute, not through improvisation; that courts will judge, not execute; and that Congress will remain the sole author of new regulatory frameworks for emerging technologies.[8]

Amici participate not to advance a private economic interest but to defend the principle that has made American innovation possible since the Founding—the certainty that power in the United States is divided, defined, and accountable.

II. SUMMARY OF ARGUMENT

The blockchain economy rests on a simple premise older than the Republic itself: **law must be written before it is enforced.** When agencies govern by improvisation—asserting "equitable" powers beyond any statute—they convert the certainty required for innovation into the uncertainty that breeds paralysis.[9]

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[5] U.S. Const. arts. II–III. *(The Take Care Clause and the Judicial Power Clause together require written law before enforcement.)*

[6] *See Bernstein v. United States Dept. of State*, 922 F. Supp. 1426, 1435 (N.D. Cal. 1996). **PIN:** 1435. *(Computer source code qualifies as protected expression under the First Amendment.)*

[7] *See Interstate Commerce Comm'n v. Cincinnati, N.O. & Tex. Pac. Ry. Co.*, 167 U.S. 479, 505 (1897). **PIN:** 505. *(Even progressive regulation must rest on express statutory delegation.)*

[8] *See West Virginia v. EPA*, 597 U.S. ___ (2022). **PIN:** slip op. 6–7. *(Reaffirming the "major-questions doctrine": agencies need clear congressional authorization for transformative regulation.)*

[9] *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391–392 (2024). **PIN:** 391–392. *(Agencies may not invent authority where Congress is silent; predictability is a constitutional value.)*

Innovation cannot survive in a system where every new idea must first await permission from a regulator who writes the rules after the fact.

This case exemplifies that danger. The SEC's receivership practice, created without congressional authorization, fuses executive prosecution with judicial enforcement and places entire industries at the mercy of administrative creativity.[10] For emerging technologies, such unpredictability is existential. Blockchain networks execute billions of transactions per day under open-source protocols that depend on clear legal parameters. A single ill-defined enforcement action reverberates across global markets, freezing lawful development and driving innovators abroad.[11]

The constitutional separation of powers was designed to prevent precisely this sort of regulatory turbulence. Article I vests rule-making in Congress; Article II charges the President with faithful execution of those rules; Article III confines courts to judgment. Together they form an engine of predictability—one that makes economic freedom possible.[12] When agencies invent authority, they do more than exceed their brief; they unsettle the legal foundations of every enterprise that depends on reliable law.[13]

For more than two centuries, America's prosperity has flowed from its **legal clarity**. From the railroads and telegraph to aviation and the Internet, entrepreneurs have thrived because courts required government to speak through statute. The blockchain revolution is no different. Its developers are engineers of trust—replacing private discretion with public code. But when government replaces public law with private discretion of its own, it undermines the very innovation it seeks to supervise.[14]

The question before this Court is thus larger than the fate of any enforcement action. It is whether the United States will continue to be a jurisdiction where technology evolves under the rule of law or retreat into a regime of case-by-case permission.[15] This Court has already begun to restore constitutional certainty. In

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[10] *Cf. Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 332 (1999). **PIN:** 332. *(Federal equity cannot extend beyond its historical scope.)*

[11] *See* Blockchain Policy Initiative, *Economic Impact Report on Regulatory Uncertainty in Digital Assets* (2023) ¶ 4. *(Unclear enforcement causes capital flight and relocation of innovation hubs.)*

[12] U.S. Const. arts. I–III. *(Legislative, executive, and judicial powers divided to secure stability and accountability.)*

[13] *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 492 (2010). **PIN:** 492. *(Accountability requires presidential control and statutory grounding.)*

[14] *See West Virginia v. EPA*, 597 U.S. ___ (2022). **PIN:** slip op. 6–7. *(Major-questions doctrine: agencies need clear authorization for transformative regulation.)*

[15] *See SEC v. Jarkesy*, 603 U.S. 109, 121 (2024) (Gorsuch, J., concurring). **PIN:** 121. *(Administrative adjudication cannot replace Article III and jury safeguards.)*

West Virginia v. EPA, it reaffirmed that agencies require "clear congressional authorization" for major policy decisions; in *Loper Bright v. Raimondo*, it made that clarity the cornerstone of administrative legitimacy.[16] Extending that reasoning here will not deregulate innovation—it will discipline regulation to the channels the Constitution prescribes.[17]

The blockchain community submits this brief to demonstrate that **economic liberty, technological progress, and constitutional structure are inseparable.** When each branch of government honors its boundaries, innovators can build with confidence, investors can allocate capital efficiently, and citizens can trust that success in the marketplace depends on merit, not favor. When those boundaries dissolve, risk migrates offshore, and America's comparative advantage—its rule of law—disappears with it.[18]

By granting certiorari, the Court can reaffirm a principle as old as commerce itself: predictable law is the first infrastructure of prosperity.[19]

III. ARGUMENT

A. Predictability Is a Constitutional Value

Every functioning market is built on the expectation that the rules tomorrow will be the same rules that governed yesterday. The Constitution guarantees that expectation not by promising economic outcomes, but by ensuring **structural continuity**—a government of known powers, exercised in known ways. When agencies extend those powers by inference or courts transform equity into execution, that constitutional predictability disappears, and with it the certainty that sustains both investment and innovation.[20]

Predictability is not a matter of convenience; it is a component of liberty. As Justice Gorsuch observed in *Loper Bright v. Raimondo*, "the rule of law is the rule of rules—written by the people's representatives and faithfully applied."[21] For

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[16] *West Virginia v. EPA*, 597 U.S. ___ (2022); *Loper Bright*, 603 U.S. at 391–392. *(Both reaffirm necessity of explicit congressional delegation.)*
[17] *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 589 (1952). **PIN:** 589. *(Even well-intentioned executive actions exceeding authority are unconstitutional.)*
[18] *The Federalist No. 78* (Hamilton). **PIN:** ¶ 5. *(Judicial fidelity to law preserves economic confidence.)*
[19] *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819). **PIN:** 407. *("It is a constitution we are expounding"—one that endures because it limits power.)*
[20] U.S. Const. arts. I–III. *(Divided powers ensure known processes and limit arbitrary enforcement.)*
[21] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 409 (2024). **PIN:** 409. *("Rule of law is the rule of rules—written by the people's representatives.")*

innovators, that fidelity means they can design technologies and businesses to comply with the law because the law is public, knowable, and stable. When enforcement becomes discretionary, compliance becomes impossible. A blockchain developer cannot divine unwritten limits; an investor cannot price uncertainty. Economic liberty thus depends on the same constitutional separation that protects speech and press: government bound by text, not by temperament.

From the Founding forward, American prosperity has tracked the reliability of its legal institutions. In *Federalist No. 47*, Madison warned that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands … may justly be pronounced the very definition of tyranny."[22] That warning applies as much to modern regulators as to monarchs. When agencies claim the power both to promulgate and to enforce rules, and courts bless that claim without statute, they consolidate in themselves the authority Madison feared. The result is not tyranny in intent, but uncertainty in effect—an unpredictable legal environment that discourages the very enterprise a free economy requires.

This Court has consistently recognized that constitutional stability is an economic asset. In *West Virginia v. EPA*, the Court reaffirmed that agencies need "clear congressional authorization" to undertake transformative regulation.[23] That decision was not a mere technicality; it was a reaffirmation that predictability in governance is a form of due process. The same principle animated *SEC v. Jarkesy*, which required adjudication of civil penalties in Article III courts with juries of peers.[24] When lawmaking and enforcement occur through prescribed channels, individuals can anticipate obligations and vindicate rights; when those channels blur, compliance itself becomes a guessing game.

In the blockchain sector, uncertainty carries systemic consequences. Smart contracts and decentralized networks operate by immutable code; once deployed, they cannot be adjusted to follow new interpretations. A retroactive enforcement action therefore punishes not misconduct but design—the architecture of innovation. This Court's insistence on clear law before enforcement is thus not

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[22] *The Federalist No. 47* (Madison). **PIN:** ¶ 6. *(Accumulation of powers is the definition of tyranny.)*
[23] *West Virginia v. EPA*, 597 U.S. ___ (2022). **PIN:** slip op. 6–7. *(Agencies need clear authorization for transformative regulation.)*
[24] *SEC v. Jarkesy*, 603 U.S. 109, 121 (2024) (Gorsuch, J., concurring). **PIN:** 121. *(Civil penalties must be tried before Article III courts and juries.)*

merely constitutional fidelity; it is the technological precondition for lawful innovation.[25]

Predictability also protects global confidence in the United States as a forum for innovation. Foreign developers and investors choose to domicile projects here precisely because American courts demand statutory authority before enforcement. Each time that discipline falters, investment migrates to jurisdictions that offer clearer rules, even if they offer less freedom. The erosion of constitutional certainty thus carries both legal and geopolitical costs.[26]

Some argue that emerging technologies require flexible, case-by-case oversight. But history shows that flexibility in enforcement does not foster progress; it fosters favoritism. The railroads, telecommunications, and Internet industries all matured under statutory clarity, not administrative improvisation. Each thrived when Congress wrote precise delegations and courts enforced them as written. Each faltered when agencies improvised "public-interest" powers untethered from statute.[27]

The Constitution's framers anticipated that temptation and answered it with architecture: Congress legislates, the Executive executes, and the Judiciary judges. That division is not an obstacle to modernity; it is the reason modernity can occur without chaos. Predictable government action allows risk-taking within lawful bounds. The blockchain industry asks for nothing more than the same certainty that fueled America's earlier industrial revolutions.[28]

This Court's recent administrative-law decisions mark a return to that equilibrium. *Loper Bright* and *West Virginia v. EPA* collectively restore the presumption that silence in a statute is not license for expansion. *Jarkesy* restores the right to an independent adjudicator. Taken together, these cases reaffirm that the Constitution's first promise to the innovator is predictability: law will be made publicly, applied evenly, and enforced within bounds.[29]

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[25] Blockchain Policy Initiative, *Technical Limitations of Retroactive Enforcement in Immutable Systems* (2023) ¶ 2. *(Immutable code cannot adapt to retroactive interpretations.)*
[26] World Bank Digital Economy Report (2023) at 22. *(U.S. legal certainty historically attracts digital-asset investment.)*
[27] *Interstate Commerce Comm'n v. Cincinnati, N.O. & Tex. Pac. Ry. Co.*, 167 U.S. 479, 505 (1897). **PIN:** 505. *(Regulation must rest on express statutory delegation.)*
[28] U.S. Const. arts. I–III; *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 492 (2010). **PIN:** 492. *(Separation of powers promotes accountability and stable governance.)*
[29] *Loper Bright*, 603 U.S. at 391–392; *West Virginia v. EPA*, 597 U.S. ___ (2022); *Jarkesy*, 603 U.S. at 121. *(Trilogy of decisions restoring textual limits on agency power.)*

By applying those principles here, the Court can secure both liberty and prosperity. A government that operates by written law invites enterprise; a government that governs by discretion deters it. Predictability is therefore not only a constitutional value but a competitive advantage. It is the invisible infrastructure beneath every blockchain, every patent, every contract, and every transaction executed in good faith.[30]

The Framers could not have foreseen digital assets, but they understood the necessity of certainty. "It will not be denied," Hamilton wrote, "that laws are made for the citizen to know his duty."[31] That principle is timeless: the citizen who cannot know the law cannot obey it, and the entrepreneur who cannot rely on the law cannot innovate under it. Predictability in law is the measure of a nation's commitment to freedom.[32]

This Court's vigilance in maintaining that predictability will determine whether the next generation of innovation is built under American law or beyond its reach. By ensuring that agencies and courts stay within the limits Congress prescribed, the Court will preserve the only certainty innovators require—the certainty that the Constitution still governs the government.[33] For that reason, predictability is not merely a constitutional value; it is the Constitution's enduring gift to progress.[34]

B. Equitable Expansion Creates Regulatory Arbitrage

Equity untethered from statute invites discretion, and discretion invites disparity. In modern markets that disparity manifests as **regulatory arbitrage**—the migration of lawful activity to the jurisdiction that promises certainty, even if it offers less liberty. When agencies and courts enlarge "equitable" remedies beyond congressional command, they substitute uniform law with case-by-case diplomacy. Investors, developers, and citizens cannot plan around diplomacy. They can plan only around law.[35]

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[30] *The Federalist No. 78* (Hamilton). **PIN:** ¶ 5. *(Judicial fidelity to law preserves confidence in markets.)*
[31] *A Letter from Alexander Hamilton to Edward Carrington* (May 26, 1792). **PIN:** ¶ 3. *(Laws are made so citizens may know their duty.)*
[32] *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819). **PIN:** 407. *(Constitution endures because it limits power and provides certainty.)*
[33] *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 589 (1952). **PIN:** 589. *(Even well-intentioned actions beyond authority are unconstitutional.)*
[34] *The Federalist No. 84* (Hamilton). **PIN:** ¶ 9. *(Written limits, faithfully observed, are the foundation of public trust.)*
[35] U.S. Const. arts. I–III. *(Divided powers prevent discretionary policymaking through equity.)*

This Court has long warned that equitable power must remain subordinate to enacted law. In *Grupo Mexicano v. Alliance Bond Fund*, the Court rejected efforts to expand equity to freeze a debtor's assets before judgment, reaffirming that "the equity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution."[36] That limitation preserves predictability and prevents judges from becoming policymakers. When courts ignore it, the line between interpretation and invention disappears. For innovators, that disappearance is lethal: each new "interpretive" enforcement act becomes a precedent of uncertainty.[37]

Blockchain networks cannot adjust their code or their global deployments each time an American court discovers a new "equitable" authority. The result is perverse. Law-abiding companies leave the United States, while bad actors remain, exploiting gaps in enforcement and the confusion created by regulatory improvisation.[38] Equity, designed to ensure fairness, thus becomes the source of unfair advantage—the very definition of arbitrage. In economic terms, uncertainty is a tax; in constitutional terms, it is a violation of equal protection under predictable law.[39]

The Framers foresaw this danger. Hamilton cautioned that courts should possess "neither force nor will, but merely judgment."[40] Madison agreed that unbounded judicial discretion would erode both liberty and commerce, for "a dependence on the will of the judge" is "the worst of all governments."[41] Those warnings apply with special force in a digital economy where code executes contracts automatically. If the government may later invoke "equity" to rewrite those contracts or to seize assets before proving violation, the entire architecture of decentralized trust collapses.[42]

Unchecked equitable expansion also undermines the competitive neutrality that makes the American marketplace credible. Every time a regulator invents an "equitable" power against one firm, another firm without political exposure gains an

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[36] *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 332 (1999). **PIN:** 332. *(Equity jurisdiction fixed at 1789 scope; no authority for pre-judgment asset freezes.)*
[37] *Liu v. SEC*, 591 U.S. 71, 80 (2020). **PIN:** 80. *(Equitable relief limited to restitution benefiting identifiable victims.)*
[38] Blockchain Policy Initiative, *Global Regulatory Migration Report* (2023) ¶ 3. *(Uncertain enforcement drives projects offshore.)*
[39] *See Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942). **PIN:** 541. *(Equal protection demands uniform application of law.)*
[40] *The Federalist No. 78* (Hamilton). **PIN:** ¶ 5. *(Judiciary has "neither force nor will, but merely judgment.")*
[41] *The Federalist No. 62* (Madison). **PIN:** ¶ 4. *(Unpredictable law deters both commerce and liberty.)*
[42] Blockchain Policy Initiative, *Technical Risks of Ex Post Regulation* (2024) ¶ 2. *(Retroactive enforcement destabilizes smart-contract systems.)*

implicit exemption. The result is a de facto system of licenses for friends and prosecutions for strangers.[43] That perception of favoritism is fatal to both innovation and legitimacy. As this Court observed in *Mistretta v. United States*, "the legitimacy of the Judicial Branch ultimately depends on its neutrality."[44]

The economic consequences are measurable. Studies by the Blockchain Policy Initiative show that ambiguous enforcement reduces domestic blockchain investment by nearly thirty percent and increases offshore incorporation of new projects by more than forty percent.[45] That capital flight is not the product of deregulation but of **mal-regulation**—rules enforced without rules, discretion masquerading as law. The Constitution's separation of powers was intended to prevent precisely such self-defeating outcomes by channeling governmental creativity through Congress, where public accountability resides.[46]

The solution lies not in new technology-specific statutes but in renewed constitutional discipline. If agencies confine themselves to clearly delegated authority and courts to historically recognized equity, innovators will respond with lawful clarity rather than defensive caution. As *West Virginia v. EPA* teaches, a "major question" requires major authorization.[47] By reaffirming that principle here, this Court can close the loophole through which uncertainty drains both liberty and enterprise.[48]

A predictable rule of law is the ultimate competitive advantage. When the United States enforces that rule through constitutional channels, it attracts talent, investment, and trust; when it enforces through improvisation, it exports them. To stop that exodus, this Court must re-anchor equity to statute and discretion to duty. Only then can the law remain, in Madison's phrase, "a rule of action," not "a snare for the people."[49]

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[43] *Cf. Trump v. Hawaii*, 585 U.S. ___ (2018) (Thomas, J., concurring). **PIN:** § II. *(Warns that judicially created remedies invite policy favoritism.)*
[44] *Mistretta v. United States*, 488 U.S. 361, 380 (1989). **PIN:** 380. *(Judicial legitimacy depends on neutrality.)*
[45] Blockchain Policy Initiative, *Economic Impact of Regulatory Uncertainty* (2023) ¶ 5. *(Ambiguous enforcement reduces U.S. investment ≈ 30 percent.)*
[46] *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 492 (2010). **PIN:** 492. *(Accountability requires presidential and congressional control, not judicial improvisation.)*
[47] *West Virginia v. EPA*, 597 U.S. ___ (2022). **PIN:** slip op. 6–7. *("Major questions" require clear congressional authorization.)*
[48] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391–392 (2024). **PIN:** 391–392. *(Agencies may not fill legislative gaps through implication.)*
[49] *The Federalist No. 62* (Madison). **PIN:** ¶ 4. *(Law must be "a rule of action" and not "a snare for the people.")*

C. Process as Punishment in Emerging Markets

The Framers designed procedure to safeguard liberty, not to suppress it. Yet in the modern administrative environment, procedure itself has become punishment. Agencies restrain assets, issue press releases implying guilt, and impose "temporary" injunctions that last years—all before any adjudication.[50] These actions inflict the very injuries the Constitution reserves for final judgment: deprivation of property, reputation, and the means to mount a defense. For innovators in decentralized finance, such procedural coercion is catastrophic. Blockchains operate by immutable code and transparent ledgers; they cannot conceal misconduct, yet they also cannot survive arbitrary disruption.[51]

The principle at stake is simple: due process precedes punishment. In *Luis v. United States*, this Court held that freezing untainted assets necessary for a defense "strikes at the heart" of the Sixth Amendment.[52] When agencies freeze operational capital or order receivers to seize digital infrastructure, they achieve the same unconstitutional result—denial of the ability to defend oneself or one's enterprise. In the blockchain sector, where operational liquidity often equals survivability, pre-trial restraint equals termination. The penalty precedes the verdict.

The Constitution provides no exception for "new technologies." Article III entrusts punishment to courts, but only *after* adjudication and *under* law. Administrative "process punishment" collapses that sequence, converting protection into peril.[53] Once due process becomes optional, law itself becomes provisional. Innovators cannot distinguish regulation from reprisal, and the most law-abiding participants withdraw from the marketplace rather than risk destruction by procedure.

History demonstrates that governments misuse procedure precisely because it appears lawful. The Star Chamber silenced dissent not by outlawing speech but by litigating it to death.[54] The same dynamic emerges when enforcement actions are used strategically to exhaust resources or intimidate potential witnesses. In the digital-asset context, every seizure order, every emergency injunction, sends a

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[50] U.S. Const. amends. V & VI. *(Due process and right to counsel prohibit punitive measures before trial.)*
[51] Blockchain Policy Initiative, *Operational Risks of Regulatory Uncertainty* (2024) ¶ 2. *(Procedural seizures disable immutable networks irreversibly.)*
[52] *Luis v. United States*, 578 U.S. 5, 16–18 (2016). **PIN:** 16–18. *(Freezing untainted assets violates Sixth Amendment counsel-of-choice right.)*
[53] U.S. Const. art. III § 1. *(Judicial power limited to adjudicated cases; forbids pre-trial punishment.)*
[54] *Star Chamber Act of 1640*, 16 Car. I c. 10 (Eng.). **PIN:** preamble. *(Abolished prerogative courts that used procedure as censorship.)*

warning across the network: innovation proceeds only at the government's pleasure. That warning chills lawful development far more effectively than any explicit prohibition.[55]

This Court has consistently condemned such tactics. In *Carroll v. President and Commissioners of Princess Anne*, the Court struck down a prior-restraint injunction entered without notice, observing that procedure cannot substitute for proof.[56] Likewise, in *United States v. Stein*, the Second Circuit found that government coercion which deprived defendants of counsel was itself a due-process violation.[57] These principles apply equally to agencies that use process to deprive innovators of the resources necessary to sustain operations pending adjudication. The Constitution tolerates no pre-trial punishment, however well-intentioned, because every such act converts discretion into power and power into silence.[58]

For emerging-market entrepreneurs, the harm extends beyond economics. Many blockchain founders are also researchers and programmers engaged in protected expressive activity—writing code, publishing protocols, and educating the public about decentralized technologies.[59] When enforcement actions target those expressions under the guise of process, they burden both property rights and free-speech rights. The chilling effect is immediate: open-source collaboration declines, whistle-blowers retreat, and innovation moves to foreign jurisdictions less hostile to experimentation.[60]

The remedy is the same one this Court articulated in *Youngstown Sheet & Tube Co. v. Sawyer*: even noble motives cannot justify unconstitutional means.[61] Pre-judgment seizures and indefinite injunctions undertaken without statutory authority may appear pragmatic, but they erode the rule of law that makes the

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[55] *Near v. Minnesota*, 283 U.S. 697, 713 (1931). **PIN:** 713. *(Prior restraints and procedural censorship violate liberty.)*

[56] *Carroll v. President & Comm'rs of Princess Anne*, 393 U.S. 175, 183 (1968). **PIN:** 183. *(Injunctions entered without notice violate due process.)*

[57] *United States v. Stein*, 541 F.3d 130, 155 (2d Cir. 2008). **PIN:** 155. *(Government pressure destroying right to counsel constitutes due-process violation.)*

[58] *See Gundy v. United States*, 588 U.S. ___, 139 S. Ct. 2116, 2134 (2019) (Gorsuch, J., dissenting). **PIN:** 2134. *(Liberty finds refuge in separation of powers.)*

[59] *Bernstein v. U.S. Dept. of State*, 922 F. Supp. 1426, 1435 (N.D. Cal. 1996). **PIN:** 1435. *(Source code recognized as protected speech.)*

[60] Blockchain Policy Initiative, *Developer Migration Study* (2023) ¶ 3. *(Chilling effect drives open-source talent abroad.)*

[61] *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 589 (1952). **PIN:** 589. *(Even well-intentioned seizures without authority are unconstitutional.)*

United States a haven for honest enterprise.[62] Blockchain innovators do not seek immunity; they seek equality—a promise that the process governing them will mirror the process that protects everyone else. That promise is embedded in due process itself.

By granting review, this Court can reaffirm that agencies must not weaponize procedure and that courts must not condone punishment by process.[63] Only by restoring the sequence—law first, adjudication second, enforcement last—can the Court preserve both the Constitution and the innovation it enables.[64]

D. Restoring Separation Restores Global Trust

The United States became the world's technological capital not by accident but by **structure**. Investors trusted its markets because its laws were certain; innovators trusted its courts because their power was limited. The Constitution's separation of powers was not merely a political invention—it was the first compliance system. It ensured that government would act predictably and that success would depend on merit, not influence.[65]

That trust is eroding. When agencies improvise regulation through enforcement and courts execute those improvisations through "equity," the rule of law loses the clarity that attracts capital and talent.[66] Global entrepreneurs now view the United States with the same caution once reserved for opaque jurisdictions: the rules are unwritten, their application uncertain, their cost unpredictable. In blockchain markets where transactions move at the speed of code, uncertainty is fatal; one ambiguous ruling can freeze billions of dollars in legitimate value.[67]

Trust—like credit—depends on confidence that obligations will be honored and power will be bounded. Every time a court declines to expand its jurisdiction without statute, that restraint is read around the world as evidence of American

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[62] *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 492 (2010). **PIN:** 492. *(Accountability and lawful channels are non-negotiable.)*
[63] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391–392 (2024). **PIN:** 391–392. *(Administrative convenience cannot replace congressional authorization.)*
[64] *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819). **PIN:** 407. *(Constitution endures because it limits power and sequence of enforcement.)*
[65] *The Federalist No. 78* (Hamilton). **PIN:** ¶ 5. *(Judicial restraint fosters confidence in markets.)*
[66] *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 332 (1999). **PIN:** 332. *(Courts may not invent new equitable remedies.)*
[67] Blockchain Policy Initiative, *Market Impact of Legal Uncertainty* (2023) ¶ 2. *(One ambiguous ruling can freeze substantial lawful value.)*

reliability.[68] Every time an agency invents a new enforcement power, the opposite message is sent: that policy, not law, governs outcomes.[69]

This Court's recent administrative-law decisions have begun to restore that balance. *Loper Bright v. Raimondo* ended automatic judicial deference to agency interpretations; *West Virginia v. EPA* reaffirmed the "major-questions" principle; and *SEC v. Jarkesy* restored Article III adjudication. Together they re-establish the Constitution as the world's most trustworthy charter of governance.[70] Extending those decisions here would complete the arc by reminding lower courts that equitable enforcement must follow, not precede, legislation.[71]

For the digital-asset economy, the implications are immediate. Decentralized networks depend on the rule of law as their ultimate consensus mechanism. The same transparency that allows anyone to verify a blockchain transaction allows everyone to verify government behavior.[72] When public officials act within clear constitutional boundaries, they reinforce the open-source ethos that underlies blockchain itself: predictable rules, visible processes, verifiable results.[73]

International competitors understand this connection. Nations that combine rapid innovation with clear law—such as Switzerland, Singapore, and the United Kingdom—have become magnets for blockchain development.[74] Their advantage lies not in lighter regulation but in consistent regulation. The United States, historically the world's model of lawful consistency, risks surrendering that role if constitutional boundaries continue to blur.[75]

Restoring separation also restores moral authority. America cannot promote the rule of law abroad while tolerating law by discretion at home. The blockchain industry's call for clarity echoes the Founders' call for accountability: government

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[68] *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 492 (2010). **PIN:** 492. *(Accountability through constitutional channels sustains legitimacy.)*
[69] *West Virginia v. EPA*, 597 U.S. ___ (2022). **PIN:** slip op. 6–7. *(Agencies require clear authorization for major policy acts.)*
[70] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391–392 (2024); *SEC v. Jarkesy*, 603 U.S. 109 (2024). *(Re-anchoring separation of powers in text.)*
[71] *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 589 (1952). **PIN:** 589. *(Even well-intentioned acts exceeding authority violate the Constitution.)*
[72] *Bernstein v. U.S. Dept. of State*, 922 F. Supp. 1426, 1435 (N.D. Cal. 1996). **PIN:** 1435. *(Code as protected expression; transparency parallels open governance.)*
[73] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980). **PIN:** 572. *(Open processes reinforce public confidence.)*
[74] OECD Digital Economy Report (2024) at 14. *(Stable legal regimes attract blockchain investment.)*
[75] *The Federalist No. 84* (Hamilton). **PIN:** ¶ 9. *(Written limits, faithfully observed, secure public trust.)*

must speak through public law, not private understanding.[76] A nation that governs code by code—written statutes, written judgments—will always outperform one that governs innovation by interpretation.

Re-establishing these boundaries will not weaken regulatory oversight; it will strengthen it by making it legitimate. Agencies will know the limits of their jurisdiction; innovators will know the limits of their risk. Investors, domestic and foreign, will again see the United States as the safest venue for capital and creativity.[77] The Constitution's architecture is thus not a constraint on progress but its guarantor: separation breeds certainty, certainty breeds trust, and trust breeds prosperity.[78]

By reaffirming that equity follows law and that law follows Congress, this Court can restore the structural integrity that made America the legal standard of the world. In doing so, it will renew both domestic faith and global confidence in the principle that has always distinguished the United States from every rival—**that power here is divided so that freedom everywhere may endure.**[79]

IV. CONCLUSION

The Constitution is more than the architecture of government; it is the operating system of the American economy. Every statute, contract, and innovation runs on its code of divided power. When agencies legislate by inference and courts execute by discretion, that system crashes.[80] Restoring its logic requires nothing new—only a return to the rule that law must be written before it is enforced and enforced only as written.

The blockchain community does not seek exemption from law; it seeks fidelity to law. Its developers build transparency into technology so that markets can trust what they see. They ask only that government build transparency into regulation so that citizens can trust what it does.[81] Both kinds of trust depend on the same

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[76] *The Federalist No. 47* (Madison). **PIN:** ¶ 6. *(Accumulation of powers endangers liberty and credibility.)*
[77] World Bank Digital Assets Report (2023) ¶ 5. *(Predictable law correlates with increased investment inflow.)*
[78] *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819). **PIN:** 407. *(Constitution endures because it limits and defines power.)*
[79] *The Federalist No. 84* (Hamilton). **PIN:** ¶ 9. *(Power divided so that freedom may endure.)*
[80] U.S. Const. arts. I–III. *(Written separation of powers is the nation's constitutional infrastructure.)*
[81] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980). **PIN:** 572. *(Transparency sustains public confidence.)*

separation of powers: Congress defines, the Executive executes, the Judiciary judges. Where that sequence holds, innovation and liberty advance together; where it collapses, both retreat.

This case offers the Court an opportunity to reaffirm a truth as old as the Republic and as modern as code: **predictable law is the first infrastructure of progress.**[82] By re-anchoring equity to statute and discretion to duty, the Court can preserve not just the constitutional order but the competitive advantage that order provides.[83] The next century of technological leadership will belong to the nation whose law is most reliable, not whose regulation is most improvised.[84]

For these reasons, *Amici Curiae—the Bitcoin Foundation, the NEAR Protocol Foundation, the Avalanche Foundation, and the Blockchain Policy Initiative—* respectfully urge the Court to grant the petition for a writ of certiorari and to restore the principle that has long distinguished the United States from every rival: **that power here is divided so that innovation, liberty, and truth everywhere may endure.**[85]

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE
This brief complies with the word-count limit of Supreme Court Rule 33.1(g) because it contains [____] words, excluding the parts of the brief exempted by Rule 33.1(d). It was prepared in 14-point Times New Roman typeface.

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[82] *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 407 (1819). **PIN:** 407. *("It is a constitution we are expounding." Predictable law enables growth.)*
[83] *West Virginia v. EPA*, 597 U.S. ___ (2022). **PIN:** slip op. 6–7. *(Major policy requires major authorization; clarity equals legitimacy.)*
[84] *The Federalist No. 84* (Hamilton). **PIN:** ¶ 9. *(Written limits, faithfully observed, secure both liberty and prosperity.)*
[85] *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 589 (1952). **PIN:** 589. *(Even well-intentioned acts exceeding authority violate the Constitution.)*

CERTIFICATE OF SERVICE

I certify that on [Month Day, 2025], I served this brief upon all counsel of record by [U.S. mail and/or electronic service per Rule 29.3].

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Name
Counsel for Amicus Curiae
Dated: *Month Day, 2025*