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WLF Asks Supreme Court to Stop SEC Abuse of Equitable Disgorgement *(Sripetch v. SEC)*

“Disgorgement is a limited remedy to take from the thief and give back to the fleeced. When nobody’s fleeced, the SEC can’t use disgorgement.”

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today asked the United States Supreme Court to vindicate its recent caselaw preventing the Securities and Exchange Commission (SEC) from abusing its powers.

The case arises from a Ninth Circuit Court of Appeals case awarding \$2.2 million in “disgorgement” without requiring a showing of financial injury to investors. For decades, the SEC used disgorgement to secure large monetary exactions from wrongdoers outside of the penalty schedules provided by federal law. But in 2020, the Supreme Court put a stop to that unlawful practice in *Liu v. SEC*. In that case, the Court clarified that disgorgement is an equitable remedy—not a legal penalty. That means that disgorgement can provide only for the direct return of ill-gotten funds to financially harmed victims.

As WLF’s brief explains, *Liu* is still good law and resolves this case. While Congress updated the securities laws immediately after *Liu* to expressly refer to disgorgement (the prior law just allowed “equitable relief”), that addition didn’t yank disgorgement out of equity or override *Liu*. And so, as the brief says, “[m]oneyless harm that allows for a seven-figure disgorgement is a walking contradiction.”

Celebrating its 49th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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