

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE  
COMMISSION,

*Plaintiff,*

v.

COINBASE, INC., ET AL

*Defendants.*

Case No. 1:23-cv-04738 (KPF)

Hon. Katherine Polk Failla

**UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE  
ADMINISTRATIVE LAW SCHOLARS IN SUPPORT OF PLAINTIFF'S OPPOSITION  
TO DEFENDANTS' MOTION ON THE PLEADINGS**

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*\* Motion for admission pro hac vice pending*

Professor Todd Phillips and Beau Baumann respectfully move for leave to file the accompanying brief in support of Plaintiff as amici curiae. The proposed brief is attached to this motion as Exhibit A. Defendants consent to the filing of amici's brief. Plaintiff, in accordance with longstanding SEC policy, takes no position on the filing of this brief.

Amicus curiae Todd Phillips is Assistant Professor of Legal Studies at the J. Mack Robinson College of Business at Georgia State University in Atlanta, GA. Professor Phillips's scholarship has focused on financial regulation, crypto assets, and administrative law. *See, e.g.*, Todd Phillips, *Commission Chairs*, 40 Yale J. on Reg. 277 (2023); Todd Phillips, *In Support of Supervisory Guidance*, 3 Corp. & Bus. L.J. 344 (2022); Todd Phillips, Ctr. for Am. Progress, *The SEC's Regulatory Role in the Digital Asset Markets*, Ctr. for Am. Progress (Oct. 4, 2021). He has testified before the U.S. Senate in support of legislation that would preserve the SEC's authority under the securities laws to regulate crypto assets that are securities. *See Legislative Hearing to Review S.4760, the Digital Commodities Consumer Protection Act Before the S. Comm. on Agric., Nutrition, and Forestry*, 117<sup>th</sup> Cong. (2022) (statement of Todd Phillips, Director of Financial Regulation and Corporate Governance, Center for American Progress) [https://bit.ly/Phillips\\_Testimony](https://bit.ly/Phillips_Testimony).

Amicus curiae Beau Baumann is Doctoral candidate at Yale Law School. His work focuses on administration law and statutory interpretation. *See, e.g.*, Beau J. Baumann, *Americana Administrative Law*, 111 Geo. L.J. 465 (2023); Beau J. Baumann, *The Turney Memo*, 97 Notre Dame L. Rev. Reflection 155 (2022). He defended agency actions in the federal Courts of Appeals at the U.S. Department of Justice. Amici have authored and funded this brief entirely by themselves, and join this brief in their individual capacities, listing their institutional affiliations for identification purposes only. They have no financial stake in the litigation.

“District courts have broad discretion to permit or deny an appearance as amicus curiae in a case.” *Auto Club of N.Y., Inc. v. The Port Authority of N.Y. and N.J.*, 2011 WL 5865296, at \*1 (S.D.N.Y. Nov. 22, 2011). Although there is no “governing standard” regarding such motions, amicus briefs may be justified where they are “of aid to the court and offer insights not available from the parties,” *id.* (citing *United States v. El-Gabrowni*, 844 F.Supp. 955, 957 n. 1 (S.D.N.Y. 1994)). Such briefs may be desirable “when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Auto. Club of N.Y.*, 2011 WL 5865296, at \*2 (quoting *Citizens Against Casino Gambling in Erie County v. Kempthorne*, 471 F.Supp.2d 295, 311 (W.D.N.Y.2007)).

Amici offer their unique perspective as scholars of administrative law in the area of financial regulation on the history and boundaries of the major questions doctrine. This case involves two pressing issues in the fields of securities and administrative law: whether novel financial products may evade the investor protections that have ensured the vitality and safety of the nation’s capital markets for the past eight decades; and the boundaries of the major questions doctrine. Amici take no position on whether the crypto assets at issue are “investment contracts” under securities legislation and the traditional *Howey* test interpreting that term. *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). Instead, they analyze Defendants’ arguments focused on the major questions doctrine, and go beyond the briefing of the parties to provide a clear framework for understanding the origin and object of its application.

Coinbase argues that the major questions doctrine should limit the reach of the SEC’s statutory authority and supersede judicial precedent regarding the nature of securities. This argument misunderstands the scope of the major questions doctrine as articulated in recent decisions by the Supreme Court and would improperly apply the doctrine beyond its reach.

Amici's perspective on the Supreme Court's development of the doctrine provides a unique perspective to the Court in this case. Amici therefore ask the Court to grant their motion.

Respectfully submitted,

Dated: [October 10, 2023]

*/s/ Jeffrey B. Dubner* \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of October, 2023, a true and correct copy of the foregoing was filed with the Clerk of the United States District Court for the Southern District of New York via the Court's CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

Respectfully submitted,

Dated: [October 10, 2023]

*/s/ Jeffrey B. Dubner* \_\_\_\_\_

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