25-1162

United States Court of Appeals for the First Circuit

CELACARE TECHNOLOGIES INC., *Plaintiff–Appellant*,
v.
CIRCLE INTERNET FINANCIAL LLC, *Defendant–Appellee*.

Appeal From the United States District Court for the District of Massachusetts

BRIEF OF AMERICANS FOR FINANCIAL REFORM AND CONSUMER FEDERATION OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF APPELLANT

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are Americans for Financial Reform and Consumer Federation of America, both consumer protection advocates. *Amici* respectfully submit this brief in support of Appellant. *Amici* strongly believe that Circle can and must void the transaction at issue, and that the particular digital technology used to execute a transaction should not foreclose the application of relevant regulations and laws. As organizations with extensive experience advocating for consumer rights in the crypto asset industry, *amici*'s perspective will aid the Court's understanding of how a ruling against Celacare will harm consumer finance and investment markets for all consumers.

Amicus Americans for Financial Reform is a coalition of more than 200 consumer, community, labor, and civil rights organizations that advocate for reform of the financial sector, to ensure it serves workers,

[1] Counsel for *amici* state that no counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel for both parties consent to the filing of this brief.

communities, and the real economy.

Amicus Consumer Federation of America is an association of more than 200 national and state nonprofit consumer organizations that work to advance consumer interests through research, education, and advocacy.

SUMMARY OF THE ARGUMENT

At its core, this case is simple: a consumer of a security irretrievably lost said security, and the issuer of the security must void and reissue the security. Rather, there is nothing about Circle's blockchain technology that makes reissuance of a security – here, the one million USDC – inherently infeasible; indeed, Circle can and has voided transactions before. The use of blockchain technology, presented as complex and novel, is a distraction from the most basic issues animating this case; it is economic function, not technology, that defines a financial instrument, its regulatory regime, and concomitant consumer rights and protections. A decision in favor of Circle would bolster the industry's tendency to engage in regulatory arbitrage, choosing when and how to characterize crypto assets to avoid oversight and deny consumers well-

established protections. The current regulatory and legal framework applicable to all other securities should be applied consistently to crypto assets, such as USDC.

ARGUMENT

I. Nothing About Circle's Blockchain Technology Makes Reissuance Infeasible.

At the outset, it is vital to understand that the technology Circle uses to issue and transact in its virtual coins allows Circle to unilaterally reverse transactions by voiding and reissuing coins used in a transaction. Celacare's request is not technologically impossible or unprecedented.[2] Indeed, Circle is required to comply with international sanctions; per its Terms, Circle is obligated to "prevent Restricted Persons from holding USDC using USDC Services."[3] If Circle were in such a situation, in which the company discovered it had indeed transferred USDC to "person[s] . . . named in any Sanctions-related list," it would have to void or indefinitely freeze those tokens. Moreover, Circle has the power to

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[2] App. 14.

[3] App. 25 (defining "Restricted Person" as "any person that is the subject or target of any sanction").

implement a process called "access denial," which allows it to place any Ethereum wallet address on a blacklist, preventing the address from sending or receiving USDC.[4] Circle has done exactly this at the request of law enforcement.[5] Circle is entirely capable of voiding and reissuing one million USDC to Celacare. As Circle executive Caroline Hill told Congress:

> The technology of smart contracts allows for the freezing of assets without delay on public blockchains, beyond the ability of traditional financial institutions with fiat. Because of the public transparency of blockchains, there is now the ability to verify sanctions compliance. Circle is proud to show this track record; anyone with an internet connection can see, for instance, the exact amount of USDC that has been frozen, or blocked, by Circle in digital assets addresses that have been designated by OFAC.[6]

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[4] App. 14.

[5] Zack Voell, *Circle Confirms Freezing $100K in USDC at Law Enforcement's Request*, CoinDesk (July 8, 2020), https://www.coindesk.com/markets/2020/07/08/circle-confirms-freezing-100k-in-usdc-at-law-enforcements-request/; Yogita Khatri, *$63 Million in USDC Frozen by Circle Following Multichain Breach*, The Block (July 10, 2023), https://www.theblock.co/post/238459/63-million-in-usdc-frozen-by-circle-following-multichain-breach.

[6] Caroline Hill, *Testimony Before the House Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion* (Feb. 15, 2024), https://democrats-financialservices.house.gov/uploadedfiles/hhrg-118-ba21-wstate-hillc-20240215.pdf.

Further, Circle's terms and conditions acknowledge their ability to unilaterally and retroactively void and reverse transactions.[7] As explained in its Terms and Conditions, "Circle reserves the right to (i) retroactively cancel such tokenization of USD for USDC and deduct such USDC from your Circle Mint account." Further, for Circle users with a "Mint" account, whose coins rely on the same technology, the Mint user agreement describes a process for reporting and potentially being reimbursed for unauthorized transfers, including transfers to external wallet addresses.[8]

II. Financial Instruments Are Defined By Their Economic Function, Not Their Technology.

This case can be distilled into fundamental principles. The holder of a security irretrievably lost said security; the issuing institution has the technological capacity to void the security – ensuring neither the institution nor the original holder incurs any loss – and to reissue a new security.

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[7] App. 30.

[8] Circle Internet Fin. LLC, *Circle Mint User Agreement* § 24, "Unauthorized and Incorrect Transactions" (Apr. 2024), https://www.circle.com/en/legal/usdc-user-agreement.

Delaware's Uniform Commercial Code has anticipated this precise situation. Title 6 of Article 8 describes certain obligations to customers, including "issu[ing] a new [security] certificate" if the owner requests the certificate be reissued before another purchaser acquires the certificate, files a "sufficient indemnity bond," and satisfies any other reasonable requirements the issuer imposes upon the holder. 6 Del. C. § 8-405.

Take, for instance, traveler's checks. Each traveler's check has a unique serial number. If a traveler's check were to be lost, stolen, or destroyed, the issuing bank can – and does – void the traveler's check and issue a replacement. Neither party loses money, as the traveler's check cannot be duplicated. Despite the complexity and novelty of blockchain technology, the basic and most relevant elements of the traveler's check case apply here: Celacare was issued one million USDC as an ERC-20 token; Celacare sought to transfer the token to a private wallet, which has a unique 42-character wallet address; Celacare inadvertently transferred the USDC to the wrong address, thereby effectively losing the one million USDC; and Circle can – and must – void the original USDC and issue Celacare new coins. As discussed, *supra* Section I, Circle

has the technological capacity to void and reissue the token. If Circle did indeed do so, neither Celacare nor Circle would lose one million USDC or incur duplicative tokens and be unjustly enriched. Notably, the fact that the USDC at issue have not been used in any other transaction is a matter of public record on the Ethereum blockchain.

The fundamental issues are the same, whether the security in question is a token or a traveler's check. It is the economic function of the instrument in question, not the underlying technology, that determines whether the instrument is a security protected by the relevant regulations and laws. Courts around the country affirm this commonsense principle. *See, e.g.*, *SEC v. Terraform Labs Pte. Ltd.*, 684 F. Supp. 3d 170, 193, 195 (S.D.N.Y. 2023) (Rakoff, J.) (finding the digital tokens in question to be "investment contracts" for purposes of the Securities Act of 1933 "under the totality of circumstances"); *Balestra v. ATBCOIN LLC*, 380 F. Supp. 3d 340, 352 (S.D.N.Y. 2019) (explaining that in analyzing whether a financial offering is considered an "investment contract," "the emphasis should be on the economic realities underlying a transaction, and not on the name appended thereto.")

(internal citations omitted); *CFTC v. My Big Coin Pay, Inc.*, 334 F. Supp. 3d 492, 497 (D. Mass. 2018) (in defining a particular crypto asset as a "commodity" under the Commodity Exchange Act the Court explained "such statutes are to be construed not technically and restrictively, but flexibly to effectuate [their] remedial purposes.") (internal citations omitted); *see also Marine Bank v. Weaver*, 455 U.S. 551, 560 n.11 (1982) (noting that to define a security, "each transaction must be analyzed and evaluated on the basis of the content of the instruments in question, the purposes intended to be served, and the factual setting as a whole."). Each of these cases involves some sort of transaction or asset underwritten by new, evolving, and innovative technology; and yet, courts cogently reduce the transaction or security in question to its most essential building blocks, and apply relevant financial regulations or laws intended to protect consumers and investors.

III. A Ruling In Favor of Circle Would Reaffirm the Regulatory Arbitrage Rife in the Stable Coin Industry.

If this Court were to disregard the economic realities of Celacare's transaction, realities which illustrate comparability with traditional forms of securities, or otherwise rule in favor of Circle, it would effectively

be reaffirming the regulatory arbitrage already rife in the stable coin and crypto industry. More worrisome, the court would put in jeopardy consumers' due protections of current law under any payment service and in any payments transaction that is asserted by the company to be irreversible, or otherwise incompatible with applicable regulations. The industry tends to claim that the technology undergirding all crypto assets is highly complex, and requires bespoke regulatory arrangements that ultimately amount to, or result in, a form of regulatory evasion. Additionally, crypto firms are strategically selective in how and when they characterize their products as one sort of financial instrument versus another. In 2022, for example, Nexo Financial, a digital assets platform, sought to modify a Civil Investigative Demand issued by the Consumer Financial Protection Bureau (CFPB), arguing that the CFPB "lacks the authority to investigate" the crypto assets at issue, because the SEC believes such products are securities. The agency found this argument unpersuasive, explaining:

> [A]n email that Nexo apparently sent its customers . . . states, "[w]e have not filed or confidentially submitted a registration statement with the SEC for any interest-bearing products and there is no guarantee it would be declared effective." In other words, Nexo

> Financial is trying to avoid answering any of the Bureau's questions about the Earn Interest Product (on the theory that the product is a security subject to SEC oversight) while at the same time preserving the argument that the product is not a security subject to SEC oversight. This attempt to have it both ways dooms Nexo Financial's petition from the start.[9]

This sort of selective characterization of crypto assets to avoid regulatory oversight is rampant. On the one hand, the industry wants stable coins to be considered legitimate payment instruments for use in commercial transactions and investments. Take, for example, the recently announced partnership between PayPal and Coinbase, which will "increase the adoption, distribution, and utilization of the PayPal USD (PYUSD) stablecoin."[10] The stated purpose of this move is to "provide value for consumers, enterprises, and institutions as they continue to utilize digital currencies across platforms and borders with the stability of regulated USD-denominated crypto-native assets."[11]

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[9] Consumer Fin. Prot. Bureau, *Decision and Order on Petition by Nexo Financial LLC to Modify Civil Investigative Demand*, 2022-MISC-Nexo Financial LLC-0001, 3 (Nov. 2022).

[1010] Press Release, PayPal, *PayPal and Coinbase Expand Partnership to Drive Innovation of Stablecoin-Based Solutions* (Apr. 24, 2025), https://newsroom.paypal-corp.com/2025-04-24-PayPal-and-Coinbase-Expand-Partnership-to-Drive-Innovation-of-Stablecoin-based-Solutions.

[11] *Id.*

On the other hand, when crypto companies like Nexo Financial can argue that compliance is not economically feasible, they will choose to operate outside of the law, claiming the law is not applicable to the technological nuances of decentralized finance and virtual coins.[12]

Regulatory arbitrage has indeed become a business model. It's cheaper to run a business without complying with government regulations. PayPal and Venmo, both online payment systems regulated by the Electronic Fund Transfer Act, have recently integrated stable coins into their platforms. PayPal USD, PayPal's own stable coin, could expose users to the same risks the relevant regulations would normally guard against – despite their current payments business's compliance with those same regulatory requirements.

Consumers, and non-crypto payments companies, suffer because of the industry's decision to operate outside of compliance with the law. The crypto industry is rife with financial scams and other predatory behavior,

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[12] Mark Hays, *Testimony Before the House Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion* (Sept. 10, 2024), https://democrats-financialservices.house.gov/uploadedfiles/hhrg-118-ba21-wstate-haysm-20240910.pdf, at 3.

potentially risking substantial financial losses for consumers of cryptocurrencies, "because the industry is not subject to, or does not comply with, the same sorts of investor protections or requirements found in conventional financial markets."[13] The FBI has confirmed that, in 2024, over half of the $16.6 billion in internet crime losses were due to crypto fraud, totaling more than $9.3 billion – a 66% increase over the prior year. Of that $9.3 billion, losses from investment scams using crypto totaled almost $5.8 billion.[14]

A decision in Circle's favor would lend credence to the flawed idea that there must be a customized regulatory framework to capture "perceived unique features" of crypto or any other digital technology.[15] However, legislation aimed at accommodating the current industry could

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[13] Mark Hays, *Testimony Before the House Financial Services Subcommittee on Digital Assets, Financial Technology and Inclusion* (Sept. 10, 2024), https://democrats-financialservices.house.gov/uploadedfiles/hhrg-118-ba21-wstate-haysm-20240910.pdf, at 2.

[14] Internet Crime Complaint Ctr., *2024 Internet Crime Report* (2025), https://www.ic3.gov/AnnualReport/Reports/2024_IC3Report.pdf.

[15] Lee Reiners, Hilary J. Allen & Mark Hays, *Statement for the Record, House Financial Services Committee Hearing on Digital Assets* 2 (June 13, 2023), https://ourfinancialsecurity.org/wp-content/uploads/2023/06/LReiners.HAllen.MHaysAFR.Statement-for-the-Record.HFS-Digital-Asset-Hearing.June-13-2023.FINAL_.pdf.

become quickly outdated as the industry continues to adapt its technology in search of the most favorable regulatory treatment; securities law will never be able to fully catch up with crypto if it is so narrowly interpreted. As the Center for American Progress explains:

> The U.S. Securities and Exchange Commission . . . can regulate securities, regardless of whether those securities are paper or traded on a blockchain; the Commodity Futures Trading Commission . . . protects against fraud and market manipulation in the commodities and derivatives markets, regardless of whether those commodities are physical or digital; the Office of the Comptroller of the Currency . . . and other banking regulators ensure the safety and soundness of banks, whether they provide loans or issue crypto assets; the Financial Crimes Enforcement Network identifies and prosecutes illicit use of the financial system, no matter the assets; and the Internal Revenue Service administers the federal tax system, ensuring that income "from whatever source derived" is reported and taxed appropriately.[16]

As outlined, companies that offer traditional securities are subject to all sorts of government regulations and laws. While crypto companies are flying under the regulatory radar, traditional securities offerings must invest in compliance, putting them at a competitive disadvantage to their

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[16] Lee Reiners, *Congress Must Not Provide Statutory Carveouts for Crypto Assets*, Ctr. for Am. Progress (Feb. 22, 2024), https://www.americanprogress.org/article/congress-must-not-provide-statutory-carveouts-for-crypto-assets/.

crypto asset peers offering identical services.

Ultimately, crypto is at its basic level just one more iteration of financial technology, much like the movement from paper stock certificates to digitized ledgers or the paper check to debit card transactions. It exposes consumers to similar risks and misconduct, which can and must be regulated by the current legal and regulatory structure. As other payments providers have pointed out, regulators should approach digital assets under the principle of "same activity, same risk, same regulation."[17] International financial regulatory bodies whose memberships include the United States have adopted precisely the same principle in their Global Regulatory Framework for Crypto-Asset Activities.[18] Indeed, creating a legal framework that is so closely tied to a specific technology could potentially make it easier for industry

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[17] Brooke Ybarra, *ABA Urges 'Same Risk, Same Regulation' for Digital Assets*, Am. Bankers Ass'n Banking J. (Feb. 15, 2025), https://bankingjournal.aba.com/2025/02/aba-urges-same-risk-same-regulation-for-digital-assets/.

[18] Fin. Stability Bd., *FSB Finalises Global Regulatory Framework for Crypto-Asset Activities* (July 17, 2023), https://www.fsb.org/2023/07/fsb-finalises-global-regulatory-framework-for-crypto-asset-activities/.

participants to exploit legal loopholes.[19] The Financial Stability Oversight Council, a consortium of US federal financial regulators, recommends "technological neutrality" when considering the types of laws and regulations that apply to the crypto-asset industry; the use of blockchain technology is a distraction from the core financial concepts at the heart of these transactions.[20] A decision in Celacare's favor would fortify the point that the crypto industry should not get special treatment; the financial protections consumers and investors are entitled to should be preserved; and laws and regulations should apply consistently across the board, to all assets, regardless of the technology involved.

CONCLUSION

The Court should rule in Celacare's favor and reverse the judgment of the district court.

Dated: May 1, 2025

Respectfully submitted,

/s/ Rucha A. Desai
Rucha Desai

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[19] *Supra*, n.13.

[20] Fin. Stability Oversight Council, *Report on Digital Asset Financial Stability Risks and Regulation* (Oct. 2022), https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.

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CERTIFICATE OF COMPLIANCE

Counsel certifies that this brief complies with the word limitation set forth in the Federal Rules of Appellate Procedure because it contains 2,738 words, according to the word-processing system used to prepare this brief, calculating by the word processing system used in its preparation, and excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Century Schoolbook 14-point font.