Nos. 19-1402 and 19-1411

IN THE

Supreme Court of the United States

ANTONIO JUBIS ZACARIAS, *et al.*,

Petitioners,

v.

RALPH S. JANVEY, *et al.*,

Respondents.

BARRY L. RUPERT, *et al.*,

Petitioners,

v.

RALPH S. JANVEY, AS RECEIVER FOR STANFORD RECEIVERSHIP ESTATE, *et al.*,

Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR *AMICI CURIAE* UNITED STATES SENATORS REPRESENTING THE STATE OF LOUISIANA IN SUPPORT OF PETITIONERS

PERRY R. SANDERS JR.
Counsel of Record
SANDERS LAW FIRM
31 North Tejon Street, Suite 400
Colorado Springs, CO 80903
(719) 630-1556
perry@scclaw.net
slf@perrysanderslaw.com

Counsel for Amici Curiae

299187

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are United States Senators representing the state of Louisiana. The Ponzi scheme perpetrated by Robert Allen Stanford and his co-conspirators defrauded thousands of Louisiana citizens—including teachers, nurses, firefighters and other hardworking people—out of billions of dollars. The Louisiana victims include several Petitioners, along with innumerable individuals engaged in various federal and state level court proceedings related to Stanford's fraudulent scheme. More than ten years after the Ponzi scheme was uncovered, less than five percent of the $8 billion that Stanford and his accomplices stole has been returned to the victims. Senators Cassidy and Kennedy have an interest in this case as representatives of Louisianans who have been denied the opportunity to fairly assert their claims against Stanford's confederates as a result of the district court's orders barring prosecution of individual investors' separately held claims.

Further, the district court and the Fifth Circuit have exceeded the judicial power granted to them by the United States Constitution and Congress. A receiver—as a creature of the district court—may not wield powers that exceed those properly granted to the district court itself. In rubber stamping the

[1] Pursuant to Supreme Court Rule 37.2(a), timely notice of intent to file this brief was provided to counsel for the parties, and all parties consented to the filing of this brief. Pursuant to Supreme Court Rule 37.6, no counsel for any party has authored this brief in whole or in part, and no person or entity, other than *amici* and their counsel, made a monetary contribution to the preparation or submission of this brief.

receiver's request to bar claims that the receiver had no standing to assert itself, the district court has strayed beyond the judicial powers granted to it in Article III and by Congress. Such actions constitute judicial law-making and usurp Congress's legislative power. *Amici*, as members of the Senate and zealous guardians of Congress's legislative powers, *see* THE FEDERALIST NOS. 48, 51 (James Madison), have an interest in alerting the Court to the serious separation of powers issues raised by the Fifth Circuit's ruling.

SUMMARY OF THE ARGUMENT

The district court's bar orders in *Zacarias* and *Rupert*, which were affirmed by the Fifth Circuit, grant federal equity receivers the power to extinguish claims held by individual investors that the receiver otherwise lacks standing to assert himself. These rulings uncouple a receiver's power from Article III's immutable standing requirements and other jurisdictional constraints imposed by Congress. They also purport to endow receivers with virtually limitless power to bargain away and extinguish claims held by Stanford's victims solely for the benefit of the receivership estate, even those claims that the receiver does not have the right to assert, prosecute or monetize directly.

The Receiver and the district court do not have the power to deprive Petitioners' of their claims in this fashion. A district court's judicial power is limited by Article III of the Constitution and by Congress. A federal equity receiver, as an officer of the district court, likewise cannot acquire power over claims greater than that of the district court that appointed him. The Receiver indisputably has no standing to assert Petitioners' claims, and therefore has no power to bar them. The Receiver's actions deprive Petitioners, and others similarly situated, of their right to recover their losses from Stanford and those that facilitated and aided his fraud. The Court should grant the petitions for certiorari in *Zacarias* and *Rupert* and reverse the decision below.

ARGUMENT

This appeal concerns whether the Receiver, appointed and controlled by a district court, has standing to extinguish claims via bar order that the Receiver does not have standing to assert himself. In resolving this inquiry, the Court must consider the source of a district court's judicial power in general and a federal equity receiver's power in particular. First, however, it is necessary to view the totality of the Receiver's actions relating to the Ponzi scheme and its settlement practices with Stanford's co-conspirators. This examination demonstrates that the Receiver's preferred settlement practices of barring individual's claims relies on powers far beyond those granted to an equity receiver or a federal district court. The Receiver's actions will prevent investors from pursuing or monetizing their individual claims absent intervention by the Court.

I. THE RECEIVER HAS REPEATEDLY BARRED INVESTORS FROM PURSUING THEIR INDIVIDUAL CLAIMS.

Robert Allen Stanford and entities under his control (the "Stanford Entities") ran a massive Ponzi scheme for more than a decade. The Stanford Entities offered certificates of deposits ("CDs") to investors with the promise of better-than-market returns. Stanford and his co-conspirators falsely represented to investors that the CDs were backed by private insurance and were safe, liquid assets. Some investors, including Petitioners, sought and received reassurances from third party entities, including reputable insurance brokers and financial advisors, that the Stanford Entities were reliable and that the CDs were insured. However, their investments in the Stanford Entities turned out to be a sham and approximately 18,000 investors lost some $8 billion as a result. *See generally Zacarias* Pet. at 5-11; *Rupert* Pet. at 2-7; *Janvey v. Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 188-89 (5th Cir. 2013).

In 2009, the Securities and Exchange Commission shut down the Ponzi scheme and filed an enforcement action in the United States District Court for the Northern District of Texas. *See Sec. & Exch. Comm'n v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 836 (5th Cir. 2019); *United States v. Stanford*, 805 F.3d 557, 564 (5th Cir. 2015). That same year the district court put the Stanford Entities in a federal receivership and appointed Ralph Janvey as Receiver with "the full power of an equity receiver under common law", including the right to assert claims against third parties and "persons or entities who received assets or records traceable to the Receivership Estate." *See* Order, *Sec. & Exch. Comm'n v. Stanford Int'l Bank, Ltd.* No. 3:09-cv-00298-N (N.D. Tex. Mar. 12, 2009), ECF No. 157; *S.E.C.*, 927 F.3d at 836.

Under the guise of his mandate from the district court, the Receiver has repeatedly settled with co-

conspirators on behalf of the receivership estate. This is facially in line with the Receiver's power under the district court's original order and a receiver's equity power generally. However, in reaching those settlements, the Receiver has repeatedly, with the district court's approval, sought to bar individual investors' claims that he has no standing to assert to settle with Stanford's co-conspirators.

For example, in 2016, the Receiver entered into a global settlement on behalf of the receivership estate with various insurance company underwriters and then barred all of the Stanford investors from pursuing their individual claims related thereto. These underwriters issued policies that covered, in different arrangements, losses and defense costs for the Stanford Entities and their officers, directors and certain employees arising from legal claims against them individually. *S.E.C.*, 927 F.3d at 836. Under this settlement, the underwriters agreed to pay $65 million into the receivership estate, and the Receiver agreed to support entry of a district court order barring all actions against the underwriters relating to the policies or the Stanford entities, necessarily including lawsuits filed by third parties asserting claims not raised by the Receiver. Over the objection of officers and employees who sought coverage under these insurance policies, the district court approved the Receiver's request for settlement and entered bar orders prohibiting all actions against the underwriters. *Id.* at 836-39. The Fifth Circuit reversed, finding that the district court and Receiver lacked authority to (i) dispossess claimants of their legal rights to share in receivership assets acquired during the settlement or (ii) bar claimants from asserting their separately held claims. *Id.* at 846, *cert. denied sub nom. Becker v. Janvey*, 140 S. Ct. 2567 (2020).

Likewise, in the instant case, the Receiver sought to settle with insurance underwriters and financial advisors that repeatedly assured investors, including Petitioners, that the Stanford Entities were trustworthy and the CDs were insured. As part of the proposed settlement, the insurance brokers agreed to pay into the receivership estate roughly $130 million ($30 million of which were earmarked for Receiver's legal fees) in exchange for settlement of all of the Receiver's claims (breach of fiduciary duty and negligence) *and* claims separately held by individual defrauded Stanford investors such as Petitioners (fraud and negligent misrepresentation). It is undisputed that the Receiver *lacked Article III standing to assert Petitioners' claims himself.* Nonetheless, the Receiver sought, and the district court entered, orders barring Petitioners' individual claims over their objection.

The only conclusion to draw from these two episodes is that the Receiver seeks, with the district court's approval, to commandeer investors' individual claims that the Receiver is asserting under the guise that it benefits the receivership estate, which in turn supposedly benefits those individual investors. While expedient, this manner of proceeding violates the individual investors' constitutional right to assert their own claims and to determine whether and for how much their own claims are resolved for. The individual investors are now mere bystanders in this litigation, without the ability to assert their own claims or opt-out of a settlement with which they profoundly disagree. The Receiver's settlement, rubber stamped by the district court and the Fifth Circuit, is beyond the power granted to a federal equity receiver.

II. THE CONSTITUTION AND CONGRESS DETERMINE THE LIMITS OF FEDERAL COURT JURISDICTION AND, THEREFORE, A FEDERAL EQUITY RECEIVER'S POWER.

Congress is responsible for creating "inferior courts" and defining the powers of those courts within the limits established by the Constitution. Article III, Section 1 of the Constitution provides that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts *as the Congress* may from time to time ordain and establish." U.S. Const. art. III, § 1 (emphasis added). This judicial power shall extend to all "Cases, in Law *or in Equity*, arising under" the Constitution and federal legislation. *Id.* § 2, cl. 1 (emphasis added).

Congresses' primacy in establishing the scope of federal court jurisdiction has been observed frequently by the Court. As Justice Samuel Chase wrote in 1799:

> "The notion has frequently been entertained, that the federal courts derive their judicial power immediately from the constitution; but the political truth is that the disposal of the judicial power (except in a few specified instances) belongs to congress. If congress has given the power to this

> court, we possess it, not otherwise: and if congress has not given the power to us, or to any other court, it still remains at the legislative disposal."

Turner v. Bank of N. Am., 4 U.S. (4 Dall.) 8, 9 (1799); *see also Sheldon v. Sill*, 49 U.S. (8 How.) 441, 449 (1850) ("Courts created by statute can have no jurisdiction but such as the statute confers. No one of them can assert a just claim to jurisdiction exclusively conferred on another, or withheld from all."); *Kline v. Burke Const. Co.*, 260 U.S. 226, 234 (1922) ("Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution."); *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 297 (2013) ("Congress has the power (within limits) to tell the courts what classes of cases they may decide[.]").

Likewise, a federal receiver derives its powers from the district court appointing the receiver. *See, e.g., Fleming v. Lind-Waldock & Co.*, 922 F.2d 20, 25 (1st Cir. 1990). It is thus universally accepted that a receiver's powers cannot exceed those of the court that created it. *See, e.g., Scholes v. Schroeder*, 744 F. Supp. 1419, 1421 (N.D. Ill. 1990) ("[T]he appointment of a receiver is inherently limited by the jurisdictional constraints of Article III and all other curbs on federal court jurisdiction."). This is true whether a federal court sits in law or in equity. *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971) ("The remedial powers of an equity court must be adequate to the task, but they are not unlimited.”).

While Congress has determined that the practice in administering an estate by a receiver “must accord with the historical practice in federal court,” Fed. R. Civ. P. 66, multiple courts (including the Fifth Circuit in a related Stanford case)[2] have determined that Article III standing principles apply when determining the scope of a federal receiver’s power to assert claims. *See Goodman v. F.C.C.*, 182 F.3d 987, 992 (D.C. Cir. 1999). This is particularly true when receivers attempt to assert claims rightfully held by others. *See Liberte Capital Grp., LLC v. Capwill*, 248 F. App'x 650, 665 (6th Cir. 2007) (“[W]e have uncovered no case in which a court held, or even suggested, that equitable considerations could trump a district court's exceeding its Article III powers by permitting a receiver to raise claims of investors.”). As succinctly stated by the District Court in Minnesota, “Granting a receiver authority to bring claims held by others would violate [standing] limitations, as ‘the ability to confer substantive legal rights that may create standing [under] Article III *is vested in Congress and not the judiciary*.’” *Kelley v. Coll. of St. Benedict*, 901 F. Supp. 2d 1123, 1129 (D. Minn. 2012) (quoting *Scholes*, 744 F. Supp. at 1421 n.6) (emphasis added).

Despite these clear limitations, the Receiver is wielding a power not granted by Congress and, in fact, even greater than those rejected by the First, Second, Sixth, Seventh, and D.C. Circuits in cases relied on by

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[2] *See Janvey*, 712 F.3d at 190.

Petitioners. *See Zacarias* Pet. at 13-20 and *Rupert* Pet. at 7-15 (examining, among other cases, *Liberte*, 248 F. App'x 650; *Goodman*, 182 F.3d 987; *Scholes v. Lehmann*, 56 F.3d 750 (7th Cir. 1995); *Fleming*, 922 F.2d 20; and *Eberhard v. Marcu*, 530 F.3d 122 (2d Cir. 2008)). In those cases, the receiver sought to control claims held by other parties for the purpose of actually pursuing those claims himself. *See Liberte*, 248 F. App'x at 653; *Fleming*, 922 F.2d at 24. Here the Receiver is *extinguishing* third party claims he has no interest in—or standing to—assert himself. Congress has not authorized this expansive authority, and there is simply no precedent in the historical usage of the judiciary's equitable powers to justify abrogating Article III standing requirements in this fashion.

In exploring how radical the bar orders in *Zacarias* and *Rupert* are, it is helpful to examine the Private Securities Litigation Reform Act ("PSLRA") where Congress permitted courts to enter bar orders extinguishing claims. The PSLRA permits shareholders to assert a private right of action in federal court to recover damages the shareholder, or a class of shareholders, sustained as a result of securities fraud. *See* 15 U.S.C. § 78u-4. This statute permits the district court to issue bar orders discharging all obligations of the plaintiff to the settling class and barring all future claims from "covered persons." *Id.* at § 78u-4(f)(7)(A). This power is balanced, however, by references to Federal Rule of Civil Procedure 23, which permits prospective class members to opt out of a certified or prospective class for settlement purposes. *See In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-CV-06728-CM-SDA, 2020

WL 4196468, at *14 (S.D.N.Y. July 21, 2020); Fed. R. Civ. P. 23(c)(2)(B), (e)(4).

By contrast, the bar orders here were entered pursuant to the district court's inherent power[3] to issue "ancillary relief measures" when administering an equity receivership. *See Zacarias* Pet. App. 82a; *Rupert* Pet. App. 50-51 (citing *SEC v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013)). The district court entered the bar orders over the objection of Petitioners who, unlike parties to settlements entered under the PLSRA, are unable opt out of the Receiver's settlement. In fact, the district court explicitly declined to certify a class under Rule 23 and instead opted to appoint the Receiver. *Zacarias* Pet. App. 35a-36a; *Rupert* Pet. App. 40-41. Petitioners and others similarly situated are left with no recourse to prosecute their claims. Rather, these defrauded investors must rely exclusively on a Receiver who possesses standing to assert only a limited range of claims and who has so far been unable—or unwilling—to recover more than a small fraction of the money lost to Stanford and his accomplices (though the Receiver's legal counsel continues to recover substantial legal fees). *See S.E.C.*, 927 F.3d at 838, 839 n.4, 845 n.9 (expressing disapproval with

[3] The scope of a federal court's inherent power in equity is similarly subject to Congress's legislative powers. *See Livingston v. Story*, 34 U.S. (9 Pet.) 632, 640 (1835) ("The first proposition, that congress has power to provide forms of proceeding for its equity courts, will not be doubted. This court has more than once decided, as has been stated, that in relation to the inferior courts, the judicial power extends no further than legislation has conferred it. Of this be true, it follows that congress can modify the means by which that power is to be exercised, as well as limit its extent.").

the district court's approval of $14 million in attorneys' fees awarded to Receiver's counsel stating the fee award should be reevaluated on remand).

The Receiver justified the bar order by again claiming, that the settlement not only benefits the receivership estate, it is to the "aggregate benefit" of all investors under the court's supervision. *Zacarias* Pet. App. 20a; *Rupert* Pet. App. 23. Yet, as a perverse consequence of the Receiver's settlement practices and the district court's rubber-stamping bar orders, Stanford's co-conspirators are now incentivized to exclude defrauded investors from the litigation and settlement process. Left unchecked, this will permit Stanford's accomplices to escape liability for numerous individually-owned claims the Receiver lacks standing to assert himself, and would rob defrauded investors, including Petitioners, of their day in court. This process has already begun to play out in other cases arising from the Stanford Ponzi scheme and will continue unless the Court puts a stop to this conduct.

"Standing is an essential and unchanging part of the case-or-controversy requirement of Article III" and is a "central component" to the Constitution's separation of powers. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The Fifth Circuit has ratified a district court's blatant usurpation of Congress's legislative power to define the scope of federal court jurisdiction. In the process, it has also robbed victims of Stanford's Ponzi scheme of any hope of complete redress in the judicial system. The Court should grant review to reaffirm the scope of Article III standing and reign in the excesses of the Receiver and the district court.

CONCLUSION

Justice has thus far been delayed to victims of the Stanford Ponzi scheme and may be completely denied if the Fifth Circuit's ruling stands. The Court should grant the petitions for certiorari in Zacarias and Rupert and reverse the decisions below.

Respectfully submitted,

PERRY R. SANDERS JR.
Counsel of Record
SANDERS LAW FIRM
31 North Tejon Street, Suite 400
Colorado Springs, CO 80903
(719) 630-1556
perry@scclaw.net
slf@perrysanderslaw.com

Counsel for Amici Curiae

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