

No. 22-51124

**In the United States Court of Appeals
for the Fifth Circuit**

Kevin Clarke; Trevor Boeckmann; Harry Crane; Corwin Smidt;
Aristotle International, Incorporated; Predict It, Incorporated; Michael
Beeler; Mark Borghi; Richard Hanania; James D. Miller; Josiah Neeley;
Grant Schneider; Wes Shepherd,

Plaintiffs-Appellants,

v.

Commodity Futures Trading Commission,

Defendant-Appellee.

On appeal from the United States District Court
for the Western District of Texas,
No. 1:22-cv-00909

**MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE
INSTITUTE FOR JUSTICE IN SUPPORT OF
PLAINTIFFS-APPELLANTS**

In accordance with Federal Rule of Appellate Procedure 29(b)(2) and Fifth Circuit Rule 29.1, the Institute for Justice (IJ) respectfully moves this Court for leave to file the attached amicus curiae brief in support of Plaintiffs-Appellants. Counsel for Defendant-Appellee has consented to the filing of IJ's amicus brief.

The Court should grant leave to file the attached amicus curiae brief because IJ's legal perspective will provide the Court with valuable insights regarding justiciability. As a nonprofit, public-interest legal center, IJ is dedicated to defending the essential foundations of a free society. Overly broad or misapplied justiciability doctrines such as standing may prevent courts from hearing meritorious claims and thereby deprive Americans of the ability to vindicate their rights. In the attached brief, IJ contributes a broader perspective to add to the arguments already before the court.

For the foregoing reasons, the Institute for Justice respectfully requests that the Court grant leave to file the attached amicus curiae brief in support of Plaintiffs-Appellants.

Dated: February 1, 2023

Respectfully submitted,

/s/ Renée D. Flaherty

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Certificate of Service

I hereby certify that on February 1, 2023, I caused the foregoing **Motion for Leave to File Brief of Amicus Curiae Institute for Justice** to be filed electronically via the Court's CM/ECF filing system in compliance with Rule 25(b) and (c) of the Federal Rules of Appellate Procedure, which will send notice of such filing to all registered CM/ECF users.

Dated: February 1, 2023

/s/ Renée D. Flaherty
*Counsel for Amicus Curiae
Institute for Justice*

Certificate of Compliance

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(a)(A) because it contains 162 words.

2. This motion 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 a proportionally spaced typeface using Microsoft Word 365 in 14-point Century Schoolbook font.

Dated: February 1, 2023

/s/ Renée D. Flaherty
Counsel for Amicus Curiae
Institute for Justice

efUnited States Court of Appeals

FIFTH CIRCUIT
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February 02, 2023

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No. 22-51124 Clarke v. CFTR
USDC No. 1:22-CV-909

Dear Ms. Flaherty,

We received your motion for leave to file an amicus brief, however, because you have consent of all the parties a motion is not needed.

In light of the aforementioned, we are taking no action on this motion.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: _____
Melissa V. Mattingly, Deputy Clerk
504-310-7719

cc:

Mr. Kyle Druding
Mr. Michael J. Edney
Mr. Jeff Rowes
Mr. Russell Ryan
Ms. Anne Whitford Stukes