

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK : CIVIL DIV. : PART 34

-----X

THEO CHINO,

:

Petitioner,

:

- against -

: Index No.  
: 101880/15

DEPARTMENT OF FINANCIAL SERVICES,  
ANTHONY J. ALBANESE, in his Official  
Capacity as the Acting Superintendent,

:

Respondent.

:

-----X MOTION

80 Centre Street  
New York, New York  
October 10, 2017

B E F O R E :

HON. CARMEN VICTORIA ST. GEORGE,  
Justice

A P P E A R A N C E S :

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ROBERT PORTAS, R.P.R., C.R.R.  
SENIOR COURT REPORTER

## PROCEEDINGS

COURT OFFICER: All rise, please. Part 34 is back  
on, the Honorable Carmen Victoria St. George  
J. Be seated.

THE COURT: Good morning.

Off the record.

(Discussion off the record.)

THE COURT: Appearances for the record.

MR. CIRIC: Pierre Ciric, counsel for plaintiff,  
no, Your Honor.

THE COURT: What's your last name?

MR. CIRIC: I'm sorry. Ciric, C-I-R-I-C. First  
erre.

MS. ROACH: Mackenzie Roach.

THE COURT: For respondent?

MR. CONLEY: Jonathan Conley, assistant attorney  
with the New York State Attorney General's Office,  
andent, New York State Department of Financial

MS. WRIGHT: Alissa Wright, also with the Attorney  
s office for respondent.

THE COURT: The Court has before it Sequence One,  
78 in declaratory judgment petition with cross  
o dismiss by the New York State Department of  
l Services, et al.

In addition to that, there was an amended  
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1                   complaint and Article 78 petition and the op -- for  
2                   failure to state a claim. That's Sequence 1.

3                   Sequence 3 is petitioner's cross motion for  
4                   limited discovery; pursuant to CPLR 408 to hold the  
5                   defendant's cross motion in abeyance, and, in the  
6                   alternative, for leave to serve a sur reply.

7                   Have the parties had any meaningful resolution  
8                   or discussions in an attempt to resolve this matter?

9                   MR. CIRIC: In terms of the discovery we've made  
10                  some attempts. About the discovery, yes, we made attempts,  
11                  yes.

12                  THE COURT: Mr. Ciric, I'll hear you on the  
13                  petition.

14                  MR. CIRIC: Yes.

15                  So the first issue I wanted to clarify in terms  
16                  of the motion to dismiss was the standing question to  
17                  ensure that all of the questions of the Court can be  
18                  addressed.

19                  At this juncture the standard is that the Court  
20                  must accept all the fact as alleged in the complaint  
21                  along with all of the affidavits that were supplied.

22                  THE COURT: Okay, hold on a second.

23                  Can you shut that air off?

24                  COURT OFFICER: In the back?

25                  THE COURT: Shut that air conditioner off  
                        Robert Portas, RPR, CRR

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1 (indicating). I can't hear you. And you need to look at  
2 me when you're talking to me so that I can understand what  
3 you're saying.

4 MR. CIRIC: Okay. I'm sorry.

5 THE COURT: Okay.

6 It is your motion; correct? Respondent's  
7 motion?

8 MR. CONLEY: The cross motion --

9 THE COURT: The cross motion.

10 MR. CONLEY: -- to dismiss. Yes, Your Honor.

11 THE COURT: All right. So speak slowly. The  
12 reporter moved up so that he can get what you're saying.

13 MR. CIRIC: Sorry. I didn't mean to scream.

14 THE COURT: Go ahead.

15 MR. CIRIC: Okay, so on the standing, the standard  
16 is for the Court to look at the face value of the complaint  
17 along with all of the affidavits that are submitted.

18 So from the -- on the face of the affidavits  
19 we've demonstrated that the plaintiff has standing --

20 THE COURT: Petitioner?

21 MR. CIRIC: The petitioner, I'm sorry. Has  
22 standing because he launched a business where he would use  
23 Bitcoins in order to allow a bodega to exchange Bitcoins  
24 against phonecards or any other items sold by bodegas. He  
25 set up computer systems, he set up agreements with bodegas,

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1 he basically made all of the appropriate investments in  
2 order to launch his business, which was in fact starting at  
3 the time of the Bit license being promulgated in the summer  
4 of 2015.

5 He -- before the -- right after the a Bit  
6 license was promulgated petitioner filed or submitted an  
7 application to DFS in order to obtain a Bit license. The  
8 key reason why the petitioner knows that he's subject to  
9 the Bit license is that in order for a customer of the  
10 bodega to use Bitcoin to make a payment he has to use  
11 what's called the QR~Code that was provided to the  
12 bodegas. And the QR~Code was not the bodega's QR Code  
13 but my client's QR~Code. So that establishes the fact  
14 that he was controlling the numbers that make up the  
15 Bitcoin algorithm.

16 Because he controlled those numbers he knew that  
17 he was subject to the Bit license, which is why he made a  
18 submission to or replied to the Bit -- applied to the Bit  
19 license.

20 Knowing and realizing the financial --  
21 significant financial impact of attempting to comply with  
22 the Bit license, within the four-month deadline following  
23 the promulgation of the regulation, my client filed  
24 pro se a petition -- an initial petition challenging the  
25 Bit license. That was in October 2015.

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1                   In January 2016 the response from DFS comes back  
2 and says, "We don't have enough information to evaluate  
3 your application." At that moment my client makes the  
4 choice that continuing the application process is futile,  
5 A, because the costs were astronomical, B, because he had  
6 already had filed a challenge in October and therefore  
7 did not pursue the -- the application process and  
8 continued to -- to follow all the -- all the steps to  
9 continue the challenge.

10                  At the same time, in the beginning of 2016 he  
11 stopped the business because he knew he was going to be  
12 subject to the Bit license and that he just could not  
13 comply with --

14                  THE COURT: '17. 2017.

15                  MR. CIRIC: I'm sorry. No, no, January 2016.

16                  THE COURT: Okay.

17                  MR. CIRIC: Because the promulgation was in  
18 August 2015.

19                  THE COURT: Then his license that he filed for was  
20 in October --

21                  MR. CIRIC: He filed -- he filed in the -- he  
22 submits the submission for the Bit license in the summer.

23                  THE COURT: October -- you just said October 2016,  
24 if I heard you correctly.

25                  MR. CIRIC: He files the challenge to the Bit  
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1 license in October 2015.

2 THE COURT: Okay.

3 MR. CIRIC: I believe it's the 26<sup>th</sup>, which was  
4 about a week before the four-month expiration. And he gets  
5 back the answer from DFS in January of 2016.

6 THE COURT: '17.

7 MR. CIRIC: January 2016, Your Honor.

8 THE COURT: Okay.

9 MR. CIRIC: At that time he just stops the  
10 business. So -- and this -- and the back and forth in  
11 terms of the challenge happens at that time from  
12 October 2015 to today.

13 So, from a standing perspective, we supplied all  
14 the papers establishing -- all the evidence establishing  
15 that, A, he had the business in place, B, he was the one  
16 controlling the Bitcoin -- what's called the Bitcoin key  
17 to simplify the technical jargon, and therefore he knew  
18 he was subject to the Bit license.

19 So, from the record, either if you look at just  
20 his affidavit that establishes all of the facts, and also  
21 we've augmented the affidavit from the petitioner with  
22 additional evidence, including the agreements with the  
23 bodegas, including an example of a transaction that went  
24 through the system and the picture of the QR code that's  
25 being used in the bodegas.

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1                   So we have -- you know, normally the affidavit  
2                   should suffice, but we've augmented the affidavit with  
3                   more evidence that explains it, because it's not a  
4                   straight forward technology obviously as to all of the  
5                   facts that support standing.

6                   Those facts have not been countered or  
7                   conflicted or opposed by the government with counter  
8                   facts. The only thing that the government has said is,  
9                   "Well, that's not sufficient to support standing because,  
10                  you know, you could have done something else or your  
11                  business could have failed for other reasons."

12                  No, the affidavit states, "I stopped the  
13                  business because I couldn't comply with the Bit license."

14                  And, normally, at this stage of a motion to  
15                  dismiss, that should suffice.

16                  THE COURT: I'll hear you.

17                  MR. CONLEY: As opposing counsel has noted, as the  
18                  petitioner is bringing this hybrid Article 78 proceeding  
19                  and challenging the validity of a regulation that was  
20                  promulgated by the New York State Department of Financial  
21                  Services in the summer of 2015 which regulates certain  
22                  business activity involving virtual currencies. We have  
23                  cross moved to dismiss that petition on three main grounds.

24                  All of the petitioner's claims fail for three  
25                  reasons:

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1                         First, the petitioner does not have standing to  
2 bring this litigation because he's not alleged any  
3 nonspeculative facts demonstrating that the regulation  
4 has caused him a concrete injury of fact.

5                         Second, the Department of Financial Services  
6 acted within the scope of its regulatory authority in --  
7 under the Financial Services Law when it promulgated the  
8 challenged regulation in the summer of 2015, because the  
9 legislature expressly conferred upon the Department the  
10 authority to regulate new financial products and services  
11 as well as the providers of those products and services.

12                         And, third, the petitioner has failed to meet  
13 his heavy burden of showing that the regulation is  
14 unreasonable and unsupported by any evidence.

15                         Opposing counsel was discussing the issue of  
16 standing. The petitioner's do not have standing in this  
17 proceeding for a simple reason: Nothing in -- in the  
18 petition demonstrates that the regulation has harmed or  
19 is likely to harm the petitioner. The petitioner alleges  
20 that he is the owner of a business called Chino, Limited.  
21 At the time the regulation -- after the regulation was  
22 promulgated the petitioner submitted an application with  
23 the Department for a license to engage in virtual  
24 currency business activity. At the time this license was  
25 pending the petitioner commenced this litigation.

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The -- In January of 2016 the Department of Financial Services notified the petitioner by letter that because of the exceptionally limited amount of information it had been provided in the application that they could not process it without more, which could not have come -- could not have been a surprise to the petitioner because there was literally no information in the application about Chino, Limited, the proposed business activity of Chino, Limited. The application is mainly filled with, "I will not disclose" and "Not applicable." And at the time that he received this letter notifying him that there was not enough information to process the application he did not follow up with the Department, he did not provide the Department more information, he did not choose to get clarification about the letter or to submit an application on behalf of the other business that he alleges owning. Instead, at that time he shut down the business and alleges that the resulting financial losses constitute an injury in fact that should confer standing. But that is not enough to -- for standing under New York law. Because he closed the business and the resulting financial losses of that were the petitioner's decision. The Department never told the -- denied the petitioner a license and never told him to close down his businesses. Instead, the

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1 petitioner is trying to get standing based on speculation  
2 of how the regulation might have impacted his business  
3 down the road. And that is not sufficient to confer  
4 standing. That's a type of -- broad nondescript  
5 allegations of anticipatory harm is not enough to  
6 establish an injury in fact, and for that reason the  
7 petitioner doesn't have standing here.

8 THE COURT: Okay.

9 The petitioner only addressed one of the three  
10 points that you've raised. I didn't hear anything from  
11 the petitioner regarding the scope of the  
12 superintendent's abilities to regulate this financial  
13 product and services, nor did I hear anything regarding  
14 the unreasonable or unsupported nature of this by any  
15 evidence or any argument regarding arbitrary and  
16 capricious. I have your papers on it and I'm going to  
17 give you an opportunity.

18 I have a question for the respondent: In the  
19 letter or in the notification in January 2016 apparently  
20 letting the petitioner know that you do not have enough  
21 information provided to you to confer upon him a license,  
22 is the Department not in effect essentially denying him a  
23 license at that point?

24 MR. CONLEY: No, Your Honor. If -- The letter  
25 explained that there -- due to the exceptionally limited  
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1 amount of information they were not able to process the  
2 application to ascertain whether his business even needed a  
3 license, whether he was engaging in activity that required  
4 a license, and, so, without more the Department could not  
5 come to a decision one way or the other. And the letter  
6 makes that abundantly clear.

7 The application and the letter both annexed to  
8 that affidavit of Mr. Chino, I believe as Exhibits 7  
9 and 9, somewhere in that range, the -- it makes it, one,  
10 exceptionally clear why the Department could not have  
11 come to a determination about this business; and, two,  
12 that it was not -- it says explicitly that it's not  
13 making a decision about the license one way or the other,  
14 just it needs -- there needs to be more information about  
15 what type of virtual currency business activity the  
16 applicant sees the business potentially engaging in, the  
17 proposed volume of business. There's just a litany of  
18 information lacking.

19 THE COURT: Is this type of letter a form letter  
20 of sorts that's sent to other people in similar  
21 circumstances or was this a letter created specifically for  
22 Bitcoin for first time ever written?

23 MR. CONLEY: This letter was written directly to  
24 Mr. Chino regarding his application. The Department takes  
25 each application letter it receives for a license for  
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1 virtual currency business activity on a case-by-case basis.  
2 And it -- because there was no information to really go off  
3 of, really, except for the address to send the letter to,  
4 they were addressing it -- it was not a form letter that  
5 was sent to -- that is sent to all applicants.

6 THE COURT: Okay.

7 Let me hear you, petitioner, regarding the  
8 respondent's contention first with respect to their point  
9 that, number one, your client did nothing to attempt to  
10 resolve the issue, which was the Department's concern was  
11 that they couldn't make a decision whether or not you  
12 even needed a license because your client did not produce  
13 enough information and they're saying that your client  
14 did nothing to follow up on that.

15 And, secondly, let me hear your response to  
16 their position that -- and the case law that they've  
17 cited in New York that anticipatory harm is not going to  
18 qualify you in this --

19 MR. CIRIC: Okay. So --

20 THE COURT: -- to establish your injury in fact.

21 MR. CIRIC: Thank you, Your Honor.

22 Okay, so on the client that did nothing part,  
23 because this is a facial challenge and not an as applied  
24 challenge, the client -- my client -- the client started  
25 pro se. We came in the case, in fact, in late 2016. But

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1 we believe that the client is still justified in what he  
2 did because there is no -- this is not a situation where  
3 there is an administrative exhaustion requirement.  
4 That's not in the statute, that's not in the writing. So  
5 the question is if he actually suffered injury in fact,  
6 which is, in fact, supported by facts in the complaint.  
7 I mean, you cannot do more -- you know, this is not  
8 speculation to have distributed QR codes to bodegas in  
9 order to initiate processing. This is not speculative,  
10 this is --

11 THE COURT: He closed down his business, though,  
12 without completing the application.

13 MR. CIRIC: Yes, right.

14 THE COURT: And their position is, "You could have  
15 come to us, you could have asked us questions, you could  
16 have followed up on the content of the letter, you could  
17 have I picked up the phone and spoken to somebody and said  
18 'Hey, I started this business, I have a lot invested in it,  
19 I project that it's going to yield profit in the future.  
20 What is it that you need, Department, from me, so that I  
21 can fulfill my obligations and comply?'"

22 MR. CIRIC: Okay. So first part to this is the --  
23 for the petitioner the question was not "How much stack of  
24 information do I need to supply." On the face of the  
25 regulation and the fact that dozens of businesses left

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1                   New York after the regulation was promulgated, the -- my  
2                   client was a small business owner, knew on the face of the  
3                   regulation that the cost to comply was prohibitive. It's  
4                   not just the \$5,000 to initiate or to pay as a filing fee,  
5                   it's also all of the requirements involving computer  
6                   supports, cyber security and et cetera, that --

7                   THE COURT: And what? What's the point? The  
8                   superintendent -- the Department of Financial Services is  
9                   who we entrust to come up with these regulations. They are  
10                  the ones with the expertise, the exceeded knowledge to be  
11                  able to come up with whatever they have as regulations for  
12                  people so people don't just, you know, come out of the  
13                  blue, start up companies and think that they don't have to  
14                  face any regulations.

15                  MR. CIRIC: Right. Okay.

16                  So, on the first part, the -- on the nonresponse  
17                  standpoint, the case that drives this is Police  
18                  Benevolent, which is --

19                  THE COURT: Police Benevolent?

20                  MR. CIRIC: Association of New York State  
21                  Troopers, 29 A.D.3d 68. Under that case the threat of the  
22                  police officers to be arrested because of mis-compliance on  
23                  some other prior facts was sufficient to confer standing;  
24                  they didn't need going to jail in order for the standing to  
25                  be recognized by the Court. You don't need to -- if the

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1                   harm is very likely but you're not in the jail yet, that  
2                   suffices to confer standing.

3                   THE COURT: That is what you believe the standard  
4                   is, "Very likely"? That's your belief?

5                   MR. CIRIC: Okay, he's got the injury --

6                   THE COURT: Give me a case that says that.

7                   MR. CIRIC: Okay.

8                   THE COURT: Give me a First Department or a Court  
9                   of Appeals case that says that the standard of law is "Very  
10                  likely," if you are very likely to suffer a harm that  
11                  suffices for the requirement.

12                  MR. CIRIC: Okay. Police Benevolent is Third  
13                  Department, Your Honor. So that -- that's -- there's  
14                  another case, which is Dairy--- which is Dairylee  
15                  Cooperative.

16                  THE COURT: "Theory"? T-H-E-O-R-Y?

17                  MR. CIRIC: Dairylee, Incorporated, 38 NY2d 6, the  
18                  year is 1975, Court of Appeals.

19                  So this is zone of interest case that says a  
20                  competitor that is not directly impacted by the  
21                  regulation but suffers from this regulation imposed by an  
22                  agency that imposed certain -- granted, in fact, certain  
23                  licensing to milk dealers has standing.

24                  So there is case law that says -- okay, our  
25                  theory is the injury has already occurred, vis-a-vis the  
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1 client, vis-a-vis my client because, A, the business was  
2 there. It's not like he had a pipe dream in a garage. I  
3 mean, his business was launched, going, number one.

4 Number two, he knew, and on the face of the  
5 affidavit he says, "I know that I'm subject to the Bit  
6 license, because under the technology I own the key of  
7 Bitcoin once the customer triggers the transaction." So  
8 he had to go to a Bit license.

9 Then you apply Police Benevolent. And Police  
10 Benevolent says he can go -- he's subject to the police  
11 power of the government. I don't know what you plan to  
12 do to people that did not comply, but he is subject to  
13 the police power of the government because the government  
14 said, "If you're not licensed you cannot run a Bitcoin  
15 business."

16 So from the moment that the -- from the moment  
17 that the Bit license was promulgated he understood,  
18 vis-a-vis the cost of compliance, that it was impossible  
19 for him to face, that either he had to shut down or --  
20 well, that was his only option. I mean, what am I going  
21 to do, spend tens of thousands of dollars when I -- the  
22 volume of business is not going to justify it?

23 So our position is he had standing at the time  
24 he filed the challenge in October 2015 because on the  
25 face of the affidavit he's -- You know, my client is not,

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1 you know, the guy around the street, he has expertise in  
2 Bitcoin, he's a programmer, if he tells his attorney, "I  
3 was subject to the Bit license because I own the Bitcoin  
4 numbers once they're transacted from the customer to me  
5 in order for them to settle the transactions with the  
6 bodega," that's -- that's at face value what I'm -- what  
7 I'm believing. So, from that standpoint, we have the  
8 evidence in front of the Court to establish standing.

9 The Police Benevolent case explains why he  
10 doesn't have to, you know, go through all of the hoops,  
11 because he already filed a challenge in October 2015, so  
12 at that point there is no administrative exhaustion  
13 requirement in this. He didn't have to wait for a  
14 determination at some point in time because it's a facial  
15 challenge as to the -- the fact that my client claims  
16 that the government does not have the expertise and does  
17 not have the power under the Financial Services Law to  
18 actually regulate the coin.

19 THE COURT: What is the basis of that statement --

20 MR. CIRIC: Okay.

21 THE COURT: -- that you just made?

22 MR. CIRIC: Yes.

23 THE COURT: Do you not agree that Bitcoin is a  
24 financial product? Yes or no?

25 MR. CIRIC: Okay. Okay. Our theory from the  
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beginning of the first paper to the last page is that  
2 Bitcoin is not a financial product or service under the  
3 statutory framework passed in 2011. Yes.

4 THE COURT: Is Bitcoin a financial product? Yes  
5 or no?

6 MR. CIRIC: No. Absolutely not.

7 During the first piece of evidence during the  
8 hearing that was organized by DFS to -- as a prelude to  
9 promulgating the regulation, evidence was entered in the  
10 record as to whether Bitcoin should be regulated, why and  
11 how. The only entry in the record -- written entry in  
12 the record is from a professor at Boston University  
13 called Mr. Williams...

14 I forgot his first name. Mr. Williams. It's in  
15 the record.

16 ...that essentially writes down black and white,  
17 and he's the only one who writes something down, that  
18 says this is not a currency, this is not money, this is  
19 basically a commodity because of its highly volatile  
20 price, it does not have characteristics of something that  
21 has -- that holds a store value, so this thing is  
22 basically no different than gold or no different than  
23 oranges to speculate upon."

24 So, from that standpoint, the first evidence is  
25 that during that hearing the only thing on the record is

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1 something that says it's not a financial product or  
2 service. So right here and there that's the first item.

3 There is all sorts of other decisions around the  
4 country and authority that is in the record that  
5 establishes that other states and other courts agree with  
6 that finding. Texas, Kansas, the -- two states. Okay?

7 THE COURT: This is New York.

8 MR. CIRIC: I understand.

9 THE COURT: That's the only relevant thing.

10 MR. CIRIC: I understand, Your Honor.

11 THE COURT: Okay.

12 MR. CIRIC: Another court in Florida decided the  
13 same thing.

14 So there is no authority in -- or no -- there is  
15 a lot of debate, obviously, these days as to what Bitcoin  
16 is, what its characteristics is, so the fact that there  
17 is uncertainty as to what it is does not confer  
18 automatically authority into an agency that actually  
19 wants to regulate Bitcoin.

20 In fact, the examples of the other states, from  
21 the perspective that they can be admitted, is the fact  
22 that other states have introduced legislation and not  
23 regulation in order to regulate Bitcoin. So --

24 THE COURT: Backtrack a second for me to the whole  
25 premise. Your client Chino's reaching out to these  
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1                   bodegas.

2                   MR. CIRIC: Yes.

3                   THE COURT: For what?

4                   MR. CIRIC: Okay.

5                   So he starts, what he wants to do is encourage  
6                   the user of Bitcoin at the retail level. So he starts by  
7                   trying to develop commercial relationships with the  
8                   bodegas. In order to do this he says, "I'm going to  
9                   first enter a contract with you to distribute  
10                  phonecards." You know, the old phone cards where you --

11                  THE COURT: Yes.

12                  MR. CIRIC: Okay.

13                  So he starts with that in order to establish  
14                  stable customer relationships with the bodegas.

15                  THE COURT: Okay. Stop there.

16                  MR. CIRIC: Yes.

17                  THE COURT: The whole point is to encourage  
18                  Bitcoin at a retail level; correct?

19                  MR. CIRIC: Yes, yes.

20                  THE COURT: Okay.

21                  And he was going to do this through the use of  
22                  these phonecards --

23                  MR. CIRIC: Yes.

24                  THE COURT: -- correct? Okay.

25                  How does that mean that Bitcoin does not hold  
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1                   store value?

2                   MR. CIRIC: Okay. So the calling card thing or  
3                   the phone card thing is not within -- it's not key to the  
4                   actual transaction. The only thing that the calling card  
5                   was --

6                   THE COURT: It's value, sir. It's value. You're  
7                   the one that stood up on this record and said that, you  
8                   know, part of the reason that there is this debate about  
9                   whether or not Bitcoin is a financial product and your  
10                  position from inception, from start to finish to today, is  
11                  that it is not a financial product, that, you know, has to  
12                  be equated to money. And your specific words that you used  
13                  on the record here before this Court was that it does not  
14                  hold store value.

15                  MR. CIRIC: Right.

16                  THE COURT: I'm trying to make sense of that  
17                  statement in relation to what active measures your client  
18                  actually took to reach out to these bodegas for the purpose  
19                  of encouraging them to gain retail level with respect to  
20                  these phone cards. That was the in that he used.

21                  MR. CIRIC: Right.

22                  So, number one, the calling card is not used to  
23                  trigger a Bitcoin transaction. The calling card -- I'm  
24                  sorry, phonecard is only used to initiate some  
25                  relationship with the bodegas. Once that relationship --

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1                   THE COURT: How is that not value?

2                   MR. CIRIC: Because that's not where the Bitcoin  
3                   transaction applies. The Bitcoin transaction is for the  
4                   client to come in and then pay for -- for the customer, the  
5                   end user customer to come in and pay for -- for everything  
6                   he wants. Whether it's with a calling card or whether it's  
7                   a gallon of milk or whether it's a piece of bread. So he's  
8                   going to present all that he purchases to the bodega and  
9                   pay with Bitcoin.

10                  THE COURT: How is that not value?

11                  MR. CIRIC: That's -- that's a bartering unit,  
12                  Your Honor. That's not -- that's value, but that's not  
13                  sufficient to make it money, number one. And, number two,  
14                  that is not --

15                  THE COURT: Says who? Says you? Says --

16                  MR. CIRIC: Says the statute, Your Honor.

17                  THE COURT: Where?

18                  MR. CIRIC: Section --

19                  THE COURT: Pull that section of the statute --

20                  MR. CIRIC: Sure. Absolutely.

21                  THE COURT: -- or any case law which supports your  
22                  position.

23                  (Brief pause.)

24                  (Mr. Ciric handing to the Court and defense  
25                  counsel.)

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1                   MR. CIRIC: Okay, so, number one, is the speech  
2 from --

3                   THE COURT: You're giving me a speech as  
4 authority? You're kidding, right?

5                   MR. CIRIC: No, no, no. I'm... Let me just  
6 switch you to the definition financial product or service.  
7 It's the fourth page. Page Number 4.

8                   THE COURT: Page 4 of -- I don't have a Page 4.  
9 My starts with Page 5 of 219 on the top right hand corner.

10                  MR. CIRIC: I'm sorry, it's the definition which  
11 is the fourth physical page of the package.

12                  Those are the definitions from the Financial  
13 Services Bureau, Your Honor. It says a financial product  
14 or service is -- essentially under 2A, either -- the  
15 first part of A, "Any financial product or financial  
16 service offered or provided by any person that's already  
17 regulated by the banking law or the insurance law."

18                  So that's Part 1. Okay? That's not here what  
19 the statutory authority is, because in 2011 Bitcoin did  
20 not -- was not already regulated by insurance law or  
21 banking law. So it's the second part, which is --

22                  THE COURT: That's not what it says. You are  
23 misreading what it says. "Any financial product or  
24 financial service offered or provided by any person  
25 regulated or required to be regulated."

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1                   MR. CIRIC: Right. Okay. So you either fall  
2 under that first bucket or the second bucket. But in order  
3 for that to happen you must have characteristics of a  
4 financial product or service. And the question is -- the  
5 fact that, Your Honor, at the second page of the packet you  
6 have -- which actually is the introduction or the  
7 legislative findings from the statute -- from the  
8 legislation that was passed in 2011, it said the  
9 regulation -- the Section F, if Your Honor -- on the second  
10 page of the package. No, no, no, I'm sorry. Right. Okay.  
11 So turn to the second page. Right. And I think it's  
12 yellow.

13                  It says that in the legislative findings it's to  
14 provide for the regulation of new financial service or  
15 products. Well, that's an undefined term, Your Honor.  
16 It's basically not a definition of a financial product or  
17 service. Financial product or service is defined and is  
18 defined in a limited fashion. So under -- essentially --

19                  THE COURT: Look at your under your Page 4  
20 Definition 2B, "Financial Products or Service."

21                  MR. CIRIC: Right. It's defined limitedly because  
22 "Financial Product or Service" essentially will not be a  
23 series of things, which is essentially credit to consumers.  
24 But the key is when the statute was passed and "Financial  
25 Product or Service" was -- was defined it was, A, defined

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1                   in a limited fashion, and, number two, there was an  
2                   exception also for either something that is regulated under  
3                   the exclusive jurisdiction of a federal agency or something  
4                   that's preempted by federal law. Our theory is it's also  
5                   preempted by federal law because only the consumer -- the  
6                   CPB, the Consumer Protection Bureau, has authority to  
7                   define the terms.

8                   THE COURT: Okay. Let's --

9                   MR. CIRIC: If it's not regulated by another  
10                  agency, which is one of the other exceptions in the  
11                  statute.

12                  THE COURT: Let's move on --

13                  MR. CIRIC: Yes.

14                  THE COURT: -- to the position that they have  
15                  acted within the scope of regulating new financial products  
16                  and services.

17                  MR. CIRIC: I'm sorry, Your Honor, I'm --

18                  THE COURT: Your adversary's position was that  
19                  they're opposing on three grounds: One, that you don't  
20                  have standing; two, that you acted within the scope of  
21                  regulating this new financial product; and, three, that you  
22                  have failed to meet the -- that high standard of  
23                  unreasonable and unsupported by any evidence.

24                  MR. CIRIC: Okay.

25                  So if you take aside for a moment the  
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1           statutory --

2           THE COURT: The standing issue.

3           MR. CIRIC: The standing issue and the statutory  
4           issue, the regulation is unreasonable for a number of  
5           reasons. First is the compliance costs are enormous.  
6           There's no provisions for a small business -- there is  
7           nothing that allows a small business to --

8           THE COURT: Where do you have grounds to suggest  
9           that that is unreasonable and unsupported?

10          MR. CIRIC: There was, in fact, discussion --

11          THE COURT: Where is -- Is there a financial  
12          number that you lean on? In other words, once it passes X  
13          dollars it becomes unreasonable?

14          MR. CIRIC: Okay. There was, in fact, after the  
15          hearing in 2014 that DFS organized in order to talk about  
16          Bitcoin there was, in fact, discussions about accommodating  
17          some kind of small business waiver. And, in fact, there  
18          were discussions as to what the thresholds will be. So it  
19          was an issue that was in the record at the time that was  
20          unresolved. So it's not -- I mean, the regulators were  
21          aware that there was this issue of, you know, if Goldman  
22          Sacks is running a Bitcoin exchange it's one thing, but if  
23          a whole bunch of other small business owners are not going  
24          to be able to necessarily comply with it. So this is part  
25          of the record that the defendants or the government

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1           actually was -- had created.

2           So that was your first question. What was  
3           your -- I'm sorry, I forgot your second question. Oh,  
4           the -- right, okay, arbitrary and capricious.

5           So that's the first issue. The second issue is  
6           besides the compliant costs, that it's essentially one  
7           size fits all when it deals with record--- recordkeeping  
8           requirements, money laundering requirements, along with  
9           all of the reporting requirements. There is in the  
10          record a recognition by the regulator that the regulator  
11          created requirements that were above and beyond the  
12          requirements for existing financial institutions and  
13          money transmitters. It's in the record along the lines  
14          of things such as longer record retaining periods, a --  
15          systematic reporting of SARs, which is the suspicious  
16          activity reports, under any circumstance when money  
17          transmitters only provided for situations where they  
18          actually have suspicions. And the third example that was  
19          in the record was, um, something that will -- there are  
20          requirements above and beyond what's being done on money  
21          transmitters, which, in fact, was recognized and  
22          acknowledged by the -- by the regulators.

23           Oh, capital requirements as well. The capital  
24          requirements piece is essentially a provision that says  
25          whatever the regulator is going to decide. When you deal

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1                   with capital requirements on financial institutions  
2                   either you set them -- you have to quantify them. So you  
3                   basically are saying as a percent of assets for a bank,  
4                   or, when you're dealing with a money transmitter business  
5                   you deal with -- you express them in the form of X amount  
6                   of dollars in reserves or X amount of -- you know,  
7                   \$50,000 of cash set up in a line of credit.

8                   So they're quantifiable in order for the  
9                   business owner to know what to shoot for. Here the  
10                  capital requirements is whatever the regulator is going  
11                  to say.

12                  THE COURT: I'll hear you. Any reply?

13                  MR. CONLEY: Yes, Your Honor.

14                  Just quickly, to go back to the standing issue.  
15                  The opposing counsel argues that this is a facial  
16                  challenge. And while the petitioner does attempt to  
17                  bring a facial challenge to this regulation there is  
18                  still a requirement that he himself has been injured by  
19                  the regulation. And it's an injury in fact, it's not an  
20                  injury based on hypotheticals.

21                  The New York State Court of Appeals has defined  
22                  an injury in fact to mean that the plaintiff will  
23                  actually be harmed by the administrative action.

24                  The plaintiff is basing -- the petitioner is  
25                  basing his standing argument on a self-professed

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1 expertise in the field of virtual currencies, but  
2 speculation on how a law is -- or a regulation may or may  
3 not be enforced in the future is far too attenuated to  
4 confer standing to someone to challenge your regulation.

5 Shifting to --

6 THE COURT: I don't think he said that. He's  
7 basing his challenge that he was harmed -- well, obviously  
8 he gives these cases that he cites to, but he says he  
9 basically had to shut down the business and he incurred  
10 losses as a result of that. How are those losses not  
11 injuries in fact to that particular petitioner?

12 MR. CONLEY: Your Honor, they may be an injury to  
13 the particular petitioner, but they are not connected in  
14 any way to the actual regulation. It's based on the  
15 petitioner's understanding of how the regulation might have  
16 impacted his business in the future. The Department never  
17 advised him to shut down his business. That was the  
18 petitioner's decision based on his understanding of what  
19 could potentially happen under the regulation in the  
20 future. And that -- that type of speculation is -- is not  
21 enough to establish that an administrative act has actually  
22 caused harm that would be considered an injury in fact.

23 THE COURT: So it's the Department's position that  
24 the petitioner would have had to have waited for the  
25 Department to specifically say, "Shut down your business,

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1 you're not getting a license"?

2 MR. CONLEY: The -- the petitioner would have  
3 needed to have incurred an injury because of the  
4 regulation. Whether that be that he was denied an  
5 application or that he was granted an application but felt  
6 that the compliance costs were too high and the resulting  
7 financial losses were an injury, to then challenge the  
8 aspects of the regulation he objected to. But what he --  
9 or -- yes, that the Department in some way compelled him to  
10 shut down the business.

11 THE COURT: So what you're saying on behalf of the  
12 respondent is that there would have had to be an  
13 affirmative act on behalf of the Department to trigger his  
14 standing. In other words, the Department would have had to  
15 flatout deny him the license or grant him the license but  
16 make it feasibly impossible for him to continue. And,  
17 therefore, by that act on behalf of the Department it would  
18 have triggered his ability to then proceed forward.

19 MR. CONLEY: Not -- not exactly, Your Honor.  
20 The -- the Department's position is that he -- the  
21 petitioner is trying to get standing in this case with  
22 these facts by litigating a decision that had never been  
23 rendered in the first place.

24 THE COURT: Well, because he's trying to say,  
25 "Listen, why do I have to wait to suffer the brunt in full  
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1 force of this injury? You're going to deny me regardless,  
2 so let me go ahead and proceed this way."

3 I mean, are you telling me that he would have  
4 had to have waited for the Department to flatout say,  
5 "You're denied a license" or "You're granted a license,  
6 but these are the things that you needed to do"?

7 MR. CONLEY: He --

8 THE COURT: In other words, what the Department  
9 did instead was it gave him -- they sent him a letter, a  
10 correspondence that invited him to converse more or to  
11 have, you know, a further discussion as to what things he  
12 could do.

13 MR. CONLEY: The -- the Department sent a letter  
14 saying that it was impossible based on the information  
15 provided the Department, it was in the dark, it has no idea  
16 what Chino, Limited is and whether there would need to be a  
17 license.

18 And the petitioner would need to show some kind  
19 of injury that resulted from the regulation. And there  
20 is -- there is no connection to the injury that they are  
21 pointing to here.

22 THE COURT: How is him not shutting down this  
23 business a direct response to a challenge to the regulation  
24 itself?

25 MR. CONLEY: Because any individual could shut  
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1 down a business and then blame it on some law or  
2 regulation. There needs to be some kind of cause and  
3 effect, some type of connection between the harm you're  
4 professing to have suffered and the law or regulation that  
5 you're challenging.

6 THE COURT: Are you suggesting that he just  
7 randomly decided to shut down the business just because?

8 MR. CONLEY: It appears that the petitioner would  
9 prefer to challenge the validity of the regulation in court  
10 based on his impressions of how the regulation might have  
11 impacted him in the future.

12 THE COURT: Okay.

13 Do you have anything to add or respond, a brief  
14 reply with respect to the other issues that were raised?

15 MR. CONLEY: Yes, Your Honor.

16 Just briefly on the point of the Department's  
17 authority under the Financial Services Law: The  
18 Department was created in the aftermath of the 2008  
19 financial crisis and in -- through the enactment of the  
20 Financial Services Law. And in enacting the Financial  
21 Services Law the legislature tasked the -- this newly  
22 formed department with the enforcement of the Banking  
23 Insurance and Financial Services Laws and provided a  
24 broad grant of authority to regulate new financial  
25 services and products and to ensure the continued safety

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1 and soundness of the banking financial insurance  
2 industries.

3                   The petitioner and virtual currency business  
4 activity clearly fits within this. The petitioner's  
5 cramped reading of the Financial Services Law ignores the  
6 broad consumer protection mandate that's clear on the  
7 face of the statute. The virtual currency business  
8 activity that is regulated under this regulation is  
9 clearly a financial product or service. It's essentially  
10 a digital form of money, a medium of exchange that acts  
11 as a denominator of value and it can be used to conduct  
12 financial transactions, such as buying and selling goods  
13 and services.

14                   The petitioner maintains and tries to draw a  
15 distinction arguing that virtual currency business  
16 activity cannot be a financial product or service because  
17 it does not involve fiat currencies.

18                   THE COURT: It doesn't -- it doesn't have to -- I  
19 would remind petitioner that a financial product does not  
20 have to be a dollar or money. I mean, how -- I'm still  
21 stuck on virtual currency is a digital form of money. Is  
22 it not?

23                   MR. CIRIC: Okay. Are you asking --

24                   THE COURT: We will go back. Go ahead.

25                   MR. CONLEY: Okay.

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1                   Yes, Your Honor, in certain uses it is.

2                   And, to be clear, the regulation does not seek  
3                   to regulate blockchain technology in the abstract or to  
4                   regulate just virtual currencies, it's regulating virtual  
5                   currency business activity, that is virtual currencies  
6                   which are defined in the statute as any digital unit that  
7                   is used a medium of exchange or a digitally stored form  
8                   of value. And it is regulating the financial use of this  
9                   for those providing financial services and products to  
10                  New York residents and consumers.

11                  The -- the petitioner's myopic interpretation of  
12                  what financial products and services involves and it must  
13                  involve fiat currency has -- finds no support in fact or  
14                  law and it defies common sense.

15                  THE COURT: Okay, let me just hear you briefly on  
16                  the federal preemption argument.

17                  MR. CONLEY: The federal preemption argument.

18                  The federal preemption argument is wholly  
19                  without merit, Your Honor. The petitioner is arguing  
20                  that the regulation is preempted by the Dodd Frank Act.  
21                  But the Dodd Frank Act was enacted to preserve consumer  
22                  protection laws, not to preempt them. And it says so  
23                  explicitly in the texts of the statute, providing that,  
24                  "Nothing in this provision shall exempt a person from  
25                  complying with state law."

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1                   In enacting Dodd Frank congress specifically  
2                   preserved the state's authority to enact and enforce laws  
3                   that grant consumers greater protections than those  
4                   provided by Dodd Frank itself. There's just nothing in  
5                   Dodd Frank that evinces a congressional intent to preempt  
6                   state consumer protection laws. And this has been --  
7                   it's been explicitly recognized by the Consumer  
8                   Protection Finance Bureau that Dodd Frank will not  
9                   supplant consumers in the financial marketplace. This  
10                  CFPB, the Consumer Finance Protection Bureau has  
11                  actually, like, worked with states, including the  
12                  Department of Financial Services, to protect consumers  
13                  and investigate wrongdoing, by bringing enforcement  
14                  actions to halt the harmful conduct that is in violation  
15                  of state and federal law. There's nothing in the text of  
16                  the statute to support some type of explicit or implied  
17                  preemption argument.

18                  THE COURT: Anything further?

19                  MR. CIRIC: Sure.

20                  If I may provide just three pieces of  
21                  information for the Court: On the arbitrary and  
22                  capricious part of things, the record displays that the  
23                  certain blockchain technologies that are not Bitcoin  
24                  could actually be reached by the regulation. There are  
25                  certain products or certain technologies where you

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1           actually use blockchain in order to develop or to make  
2           certain aspects which could actually be covered by the  
3           regulation. There's two examples.

4                             (To Ms. Roach) If you could just tell me what  
5                             the index number is or...

6                             It's actually in the -- I'm sorry, it's in the  
7                             affirmation for the motion to dismiss, Section 37,  
8                             Footnote 57, there is two technology names, one called  
9                             Uprov and the other called Ascribe. Ascribe is an  
10                            electronic copy of digital art. If you actually -- you  
11                            actually --

12                          THE COURT: Why is any of that relevant to the  
13                           arbitrary and capricious standard?

14                          MR. CIRIC: Because the regulation -- the  
15                           regulation could include those type of technologies,  
16                           because it says anything of value that travels essentially  
17                           on the blockchain train, to make it simple. Okay, so if  
18                           you picture blockchain like a train and if you put little  
19                           wagons and if you have essentially electronic versions of  
20                           print art or digital art, that technically is also a store  
21                           value, because that's what people are trying to sell them  
22                           for. So technically the regulation that is so overbroad  
23                           is, in fact, cover -- could technically cover those.

24                          The second technology called Uprov is electronic  
25                           copies of photos and videos. If there is a transaction

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1                   associated to those, the item that travels on the  
2                   blockchain train, you could actually make an argument  
3                   that this -- that the regulation covers those type of  
4                   products. So if you say store value it could be  
5                   anything. So basically our argument is that it's too  
6                   broad. That's the first issue.

7                   On the second issue is the statute, 1042(a) is  
8                   not defined in broad terms. The government wants it to  
9                   be broad to capture everything and anything. The statute  
10                  doesn't say that. The statute is limited in nature,  
11                  that's the key I want -- I want the Court to just take  
12                  away from the point of the petitioner.

13                  On Dodd Frank: If I may just -- and I apologize  
14                  for the enumeration [sic] of the papers -- in the  
15                  packet that I gave you there is at the end a page that is  
16                  actually Page Number 4.

17                  THE COURT: I didn't see this in your moving  
18                  papers or your responsive papers.

19                  MR. CIRIC: Actually they're in the -- they're  
20                  cited. Yeah, they're cited.

21                  THE COURT: This seems to be a compilation of  
22                  various --

23                  MR. CIRIC: I'm sorry, Your Honor --

24                  THE COURT: -- definitions.

25                  MR. CIRIC: -- I wasn't sure where you were going  
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1 to go.

2 THE COURT: This here you handed up to me is  
3 not -- in its current form you've given to me is not an  
4 exhibit to anything. Is it in separates?

5 MR. CIRIC: Well, we cite -- actually both  
6 sides -- both sides cite a statute. It's the Dodd Frank  
7 section that essentially refers to the power of the CPB  
8 over financial products and services. So the only thing we  
9 want to attract the attention of the Court on is something  
10 called 15--- it's actually Sub Part 1511, which is on  
11 Page 4 of -- Numbered 4 -- Okay? -- I -- I don't know which  
12 page it is, the physical page, but if you look at the  
13 bottom of Page Number 4, and if you see right before, "B,  
14 Rules of Construction, Section 11," the little "11..." I'm  
15 sorry.

16 (Brief pause.)

17 MR. CIRIC: And the Number 11 says, "Such other  
18 financial product or service as may be defined by the  
19 Bureau and by regulation for purposes of this title, if the  
20 bureau finds such financial products or services..." All  
21 sorts of conditions.

22 So Dodd Frank said it's the CBP that defines,  
23 Consumer Protection Bureau. I agree with the  
24 government -- we agree with the government that states  
25 have complete power to develop legislation for consumer

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1 protection. Once a product -- once a financial product  
2 or service is defined the CBP controls that. After that  
3 control takes place the government can do whatever it  
4 wants, absolutely. But, in terms of the definition, a  
5 state doesn't have the power to just come up and say that  
6 an art -- you know an art gallery or a dealer in oranges  
7 is subject to a regulation.

8 THE COURT: Okay. That's the argument on the  
9 Article 78 and declaratory judgment, petitioner, with the  
10 cross motions.

11 With respect to Sequence Number 3, the motion to  
12 compel --

13 MR. CIRIC: Yes.

14 THE COURT: -- there were papers that were filed  
15 just a few days ago. So this Court --

16 MR. CIRIC: Okay.

17 THE COURT: Go ahead.

18 MR. CIRIC: Okay.

19 In terms of the bottom line, Your Honor, the  
20 Court -- the case law extensively supports the ability  
21 for a Court within an Article 78 challenge to order,  
22 under CPLR 408, a limited discovery order, if, in fact,  
23 the discovery is helping the Court to determine  
24 information directly relating to the cause of action.

25 The reason we are asking for the expert is that  
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1 since everybody and anybody disagrees on what Bitcoin is  
2 these days, the issue or the request of the petitioner is  
3 to say, Your Honor, get an expert in order to help you  
4 analyze what the economic nature of Bitcoin is.

5 THE COURT: My question to you is if these papers  
6 that were filed on October 2<sup>nd</sup> -- these were E-filed  
7 papers?

8 MR. CIRIC: They were E-filed papers. The papers  
9 supporting the limited discovery request were filed in  
10 September -- were E-filed in September and I think it's the  
11 paper copies that we delivered to you last week, yes. The  
12 courtesy copies, I'm sorry.

13 THE COURT: The petitioner on this cross motion  
14 for limited discovery seeks to hold the defendants -- the  
15 respondent's cross motion in abeyance, or, in the  
16 alternative, for leave to serve a sur reply. Let me hear  
17 you. Are you prepared to orally argue on this motion?

18 MR. CONLEY: Yes, Your Honor.

19 THE COURT: Okay.

20 Let me hear you.

21 MR. CIRIC: Yes. So the bottom line is if the  
22 Court orders -- there is ample authority for a Court to get  
23 an expert to determine critical information related to the  
24 cause of action. There is ample authority to have the  
25 court get an expert to help the Court analyze information

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1           that is critical to or directly related to the cause of  
2           action. That's the Farkas case which I refer to.

3           So under that rule what we basically argue is in  
4           order to get the expert -- any economic expert that can  
5           speak to the nature of -- the economic nature of Bitcoin  
6           is critical in order for -- for the Court to make the  
7           determination of whether or not Bitcoin is a financial  
8           product or service. That's number one.

9           Under those types of situations abeyance has  
10          been provided in situations where -- of the motion to  
11          dismiss that was filed by the other side is accommodated  
12          for the purpose of making that determination. So we have  
13          a couple of...

14           (Mr. Ciric and Ms. Roach confer.)

15           THE COURT: Your opposition...?

16           MR. CONLEY: Your Honor, on the discovery issue,  
17          the petitioner's motion for limited discovery is  
18          inappropriate for multiple reasons. Setting aside the  
19          particulars of the discovery that is actually being sought  
20          as a procedural matter, discovery is presumptively improper  
21          in Article 78 proceedings. And under the CPLR an automatic  
22          stay is put in place when a party files a dispositive  
23          motion to dismiss under CPLR 3211.

24           So, here, to direct discovery, the moving party,  
25          the petitioner, would have to demonstrate an ample need

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1 for the requested discovery that was both material and  
2 necessary to the claims being raised.

3 The claims being raised here are that the  
4 Department of Financial Services exceeded the scope of  
5 its regulatory authority in promulgating challenge  
6 regulation and that that -- and that the regulation,  
7 certain aspects of its scope and design are arbitrary and  
8 capricious.

9 In other words, the petitioner is raising pure  
10 questions of law that this Court can fully and fairly  
11 review by looking at the challenged regulation itself,  
12 the enabling legislation, the Financial Services Law and  
13 applicable precedent.

14 Yet the petitioner is seeking a wide range of  
15 irrelevant information, including an order from the Court  
16 compelling Paul Krugman, the Nobel Prize winning  
17 economist and New York Times columnist, to testify on the  
18 economic nature of Bitcoin; an order compelling the  
19 Department to produce an assortment of emails and other  
20 written documentation that was internally circulated over  
21 a three-year period; and an order directing the former  
22 superintendent, the head of the Department of Financial  
23 Services, to attend a deposition to be deposed on his  
24 internal thought processes leading up to the promulgation  
25 of the regulation.

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1                   These requests are facially improper and  
2 inappropriate, Your Honor. And it's a quintessential  
3 example of a party seeking permission to go on a fishing  
4 expedition and find something of possible relevance that  
5 could salvage their claims. And the petitioner's request  
6 here should be denied.

7                   THE COURT: Do you have any objection to them --  
8 their request for a sur reply? I believe that was an  
9 outstanding request, although maybe you resolved that.

10                  MR. CIRIC: The sur reply was coming from the  
11 prior -- from the paper record prior to the filing  
12 conversion, Your Honor.

13                  THE COURT: Okay. So that is a nonissue at this  
14 point.

15                  MR. CIRIC: Correct.

16                  THE COURT: Okay.

17                  Anything to add?

18                  MR. CIRIC: On the -- on the discovery piece, on  
19 the ample need situation, under -- By the way, limited  
20 discovery is routinely granted. Okay? This is not a  
21 situation where -- even in governmental cases or in -- it's  
22 exceptional. It's -- it's not every day, but it's not  
23 just, you know, supremely rare. So the key is if --

24                  THE COURT: What's your response to the fact that  
25 discovery is stayed because of the filing of the motion?

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1                   MR. CIRIC: Okay, the discovery, in terms of the  
2 expert, is critical to what Bitcoin is. In order to  
3 resolve the motion to dismiss that's a critical threshold  
4 question. In order for that critical threshold question to  
5 be addressed you first -- if you get the expert you have to  
6 basically stop the rest of the train. That's our request.

7                   THE COURT: Anything further?

8                   MR. CONLEY: Not -- No, Your Honor.

9                   THE COURT: Okay.

10                  This Court has fully heard the parties with  
11 respect to Sequence Number 1 and Sequence Number 3  
12 regarding Theo Chino against the New York State  
13 Department of Financial Services, et al, under Index  
14 Number 101880 of 2015.

15                  The Court reserves decision. We will put this  
16 on for a future date for a decision.

17                  Off the record.

18                  (Discussion off the record.)

19                  THE COURT: Back on the record.

20                  The parties have agreed to order the transcript  
21 of today's proceeding for this Court's consideration in  
22 full of these motions. The parties are directed to order  
23 the minutes of this proceeding within the next five days.  
24 It does not have to be done expedited, but it needs to be  
25 done within the next five days and provided to the Court

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1                   upon receipt.

2                   The Court will review the minutes, as well as  
3                   obviously all the written submitted material with respect  
4                   to these decisions, and the case will be next on for  
5                   January 11, at 2:15 p.m. for a decision.

6                   Thank you.

7                   MR. CIRIC: Thank you very much, Your Honor.

8                   MR. CONLEY: Thank you.

9                   (Whereupon, the above-captioned proceedings  
10                  were concluded.)

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12                  (It is hereby certified that the  
13                  (going is a true and accurate  
14                  (transcript of the proceedings.  
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15                  ROBERT PORTAS, RPR, CRR  
15                  Senior Court Reporter  
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