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NCLA’s Supreme Court Reply Brief Refutes SEC’s New Arguments Against District Court Jurisdiction

Securities and Exchange Commission, et al. v. Michelle Cochran

Washington, DC (September 8, 2022) – A [reply brief](#) submitted to the U.S. Supreme Court in *SEC v. Cochran* today explains why Texas accountant Michelle Cochran has the right to have her [original lawsuit](#) against the Securities and Exchange Commission (SEC) heard in federal district court. SEC has tried to block this essential avenue for vindicating constitutional safeguards, insisting that Congress insulated the agency’s administrative proceedings from any meaningful judicial scrutiny until after SEC has issued a final order in the proceeding.

As NCLA’s brief details, SEC has attempted to shift the focus of the case, including by rewriting its own question presented to omit the word “jurisdiction” and pivoting to new arguments that have nothing to do with jurisdiction. This strategy just underscores the weakness of SEC’s arguments on the actual question presented: whether a federal district court has jurisdiction to hear a suit in which the respondent in an ongoing SEC administrative proceeding seeks to enjoin that proceeding because its adjudicator enjoys unconstitutional removal protections.

The Fifth Circuit correctly held, in its *en banc* [ruling](#) in favor of Ms. Cochran, that nothing in the Securities Exchange Act of 1934 strips district courts of jurisdiction over all civil cases arising under the Constitution. Moreover, the Supreme Court already reached an analogous conclusion in *Free Enter. Fund v. Public Co. Acct. Oversight Bd.*, a 2010 case concerning the same statutes and the same kind of structural constitutional defect in SEC proceedings. In *Free Enterprise Fund*, the Supreme Court rejected the precise argument the SEC makes in its briefing—that the ’34 Act divests district courts of jurisdiction over removal power challenges.

Ms. Cochran is challenging the constitutionality of SEC’s Administrative Law Judges, who enjoy multiple layers of protection from removal. If the president cannot remove these federal “officers,” then he cannot control the agencies he’s charged with overseeing. Ms. Cochran requests that her case be heard before a federal court that is competent to decide the constitutional claims at issue *before* the unconstitutional ALJ proceeding takes place.

Latham & Watkins partner Greg Garre, a former Solicitor General of the United States, is Counsel of Record. He will present oral argument at the Supreme Court on November 7, 2022. Peggy Little, who successfully argued the case before the *en banc* Fifth Circuit, is NCLA’s senior litigation counsel on the case.

NCLA released the following statement:

“Under the government’s scheme, individuals charged by the SEC must endure years of unconstitutional administrative proceedings, sometimes lasting nearly a decade, before they can present their structural constitutional claims to a federal court competent to hear them—only to have those proceedings vacated. Ms. Cochran has already endured one such unconstitutional hearing, and if the SEC has its way, that process will expose her to a second to-be-vacated ALJ proceeding followed by a third adjudication over a decade after the events at issue. This process is the punishment! The Supreme Court should affirm the *en banc* Fifth Circuit and call a halt to this abuse of power.”

— **Peggy Little, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#) or watch the case video [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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