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Watch: The Punishment Is the Process – Administrative Law Judge Proceedings Are Unconstitutional

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



Photo: Dramatization of Michelle Cochran’s Sisyphean task against SEC’s administrative proceedings.

Washington, DC (April 14, 2023) – Michelle Cochran’s daughters were little girls when she decided to start the seven-year uphill journey against the Securities and Exchange Commission (SEC) to clear her name. The targets of SEC’s administrative enforcement proceedings do not have the rights available to defendants in civil court proceedings. They lack rights to pretrial discovery, protections of evidentiary rules, and access to a jury trial. Given that SEC employees play judge, jury, and prosecutor, it is hardly surprising that the agency wins the vast majority of the cases it brings through administrative proceedings. Worst of all, SEC Administrative Law Judges (ALJs) enjoy multiple—and therefore unlawful—layers of for-cause protection from removal by the President.

Today the New Civil Liberties Alliance, a nonpartisan, nonprofit civil liberties group, released a new animated video, “[The Punishment Is the Process](#),” inspired by the myth of Sisyphus, to explain the impact that SEC’s ALJs and its in-house administrative proceedings have on the lives of those burdened by the process.

Faced with the prospect of ruinous proceedings helmed by an executive officer acting without the constitutionally required degree of accountability, private citizens like Michelle Cochran turn to one of the most important bastions against unconstitutional government action—federal district courts. But in this case and others like it, SEC has tried to block that essential avenue for vindicating constitutional safeguards, insisting that Congress has insulated SEC’s administrative proceedings from any judicial scrutiny until the agency has decided to conclude them.

The legitimacy of these administrative proceedings is currently in question at the Supreme Court. *SEC v. Michelle Cochran* asks the Supreme Court to decide whether the scheme of administrative and judicial review in the Securities Exchange Act of 1934 implicitly strips federal district courts of jurisdiction to hear structural constitutional claims challenging the agency’s tribunal.

Now teenagers, Michelle's girls were proudly present to support their mother during oral argument in her case before the Supreme Court last November. For Michelle and countless others, the process is the punishment at SEC. The Supreme Court should reject SEC's troubling theory that the Exchange Act strips federal courts of their duty to protect individuals from unconstitutional agency action.

Excerpt from the video:

“At the Securities and Exchange Commission, ALJs have expanded their jurisdiction, acting like federal judges. But they're not federal judges. ALJs are powerful, biased, unaccountable bureaucrats who secure easy wins for the government agencies they represent at the expense of our civil liberties. What's worse, ALJs are untouchable because they're shielded by multiple layers of job security and tenure protection.”

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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