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NCLA Asks SCOTUS to Hear Suit, Say Use of Receivers in SEC Cases Violates Appointments Clause

Timothy Barton v. United States Securities and Exchange Commission

Washington, DC (November 17, 2025) – The New Civil Liberties Alliance filed an *amicus curiae* [brief](#) today asking the Supreme Court to hear *Barton v. Securities and Exchange Commission*, which challenges the practice of courts appointing receivers to control bankrupt companies’ assets at SEC’s request when the agency prosecutes them in regulatory enforcement cases. The district court in this case appointed a receiver with so much authority and discretion that he became an “officer” of the United States under Supreme Court precedent regarding the Constitution’s Appointments Clause, despite Congress never having vested courts with the power to make such appointments. The U.S. Court of Appeals for the Fifth Circuit upheld the appointment. NCLA urges the Justices to consider and overturn this unconstitutional arrangement that the Supreme Court has never approved.

Enabled by courts, SEC uses receiverships of this kind to circumvent the bankruptcy procedures established by Congress through decades of legislative trial and error, replacing it with an *ad hoc*, non-statutory shadow process. These receivers exercise both judicial and executive power, but they are not supervised by anyone at SEC or elsewhere in the Executive Branch. Article I vests Congress—not courts—with the power to pass laws governing bankruptcy, and no Congressional statute grants courts the ability to appoint receivers like the one in this case who effectively act as officers of the United States. With judicial appointments of such receivers becoming increasingly routine, and courts so often overlooking the manifest constitutional problem with them, *Barton* provides an ideal and long overdue opportunity for the Supreme Court to address this issue and ameliorate it.

NCLA released the following statements:

“Court-appointed receiverships have long been SEC’s go-to end run around the bankruptcy laws enacted by Congress. This case illustrates why they violate the Appointments Clause, but the constitutional defects in this scheme run far deeper—into separation of powers concerns and beyond.”

— **Russ Ryan, Senior Litigation Counsel, NCLA**

“Federal courts have no business appointing receivers in SEC enforcement cases. The courts lack statutory authority to do it, these receiverships violate the Appointments Clause, and judges traduce the separation of powers by supervising a receiver’s indisputably executive actions within the Judicial Branch.”

— **Mark Chenoweth, President, NCLA**

For more information visit the *amicus* page [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.