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WLF Asks Supreme Court to Vacate SEC's Unconstitutional Enforcement Actions

(*Lucia v. SEC*)

“If the SEC’s constitutional violations have no consequence because the agency may simply ratify all acts taken by its improperly appointed agents, then there will be very little incentive to comply with the Appointments Clause in the future.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today urged the U.S. Supreme Court to vacate a final order of the U.S. Securities and Exchange Commission (SEC) that violates the Constitution by placing federal enforcement authority in the hands of an administrative law judge (ALJ) who was not properly appointed as an “Officer of the United States” under the Appointments Clause.

The case, which arises from an SEC enforcement action against registered investment adviser Raymond J. Lucia Companies, Inc. and its principal, epitomizes the SEC’s increased tendency to opt for enforcement of federal securities laws before its own ALJs rather than before Article III judges in federal court. That trend is all the more troubling given that, as “Officers of the United States,” the SEC’s ALJs are selected not by the President or the Commission itself (as required by the Appointments Clause), but by the SEC’s Chief ALJ, subject to approval by the SEC’s Office of Human Resources.

As WLF’s brief makes clear, that violation of the Appointments Clause renders the proceedings and resulting order against the *Lucia* petitioners unconstitutional. Given the gravity of that constitutional deficiency, WLF argues that the violation not only undermines the validity of the SEC’s underlying proceedings but requires the SEC to start from scratch if it chooses to renew enforcement efforts against the petitioners. As its “ratification” order makes clear, however, the SEC deems any constitutional defect in its ALJ proceedings to be of no consequence.

WLF’s brief argues that the Supreme Court’s precedent bars any effort to salvage *ultra vires* administrative hearings conducted by officials in violation of the Appointments Clause. Indeed, regardless of the name that government officials have previously used when upholding proceedings conducted by improperly appointed officials—whether the *de facto* officer doctrine, harmless error analysis, or ratification—the Court has uniformly rejected such efforts when (as here) the defendant has raised a timely objection to the qualifications of the presiding officer.

Celebrating its 41st year as America’s premier public-interest law firm and policy center, WLF advocates for free-market principles, limited government, individual liberty, and the rule of law.

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