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## WLF Asks D.C. Circuit to Vacate SEC's Erroneous and Unconstitutional Enforcement Action

*(Timbervest LLC v. SEC)*

**“[T]he SEC nearly always prevails in its own in-house proceedings ... If the SEC may influence the outcome of cases merely by pursuing complex and novel ones via internal agency administrative proceedings rather than in federal court, then the reach of federal securities law will increasingly turn on the caprice of the agency, not the will of Congress.”—Cory Andrews, WLF Senior Litigation Counsel**

WASHINGTON, DC—Washington Legal Foundation today asked the U.S. Court of Appeals for the D.C. Circuit to vacate a final order of the U.S. Securities and Exchange Commission (SEC) that not only imposes liability on the defendant company and its principals well beyond the five-year statute of limitations, but also violates the constitutional separation of powers by placing federal enforcement authority in the hands of an administrative law judge (ALJ) who is unaccountable to the President.

In its *amicus* brief urging reversal of the SEC's order below, WLF charges that because all of the SEC's so-called equitable remedies in this case—including disgorgement, cease-and-desist orders, and associational bars—are punitive in nature, they are completely barred by the applicable five-year statute of limitations. In addition, WLF's brief argues that the SEC's ALJs impermissibly impair the President's ability to ensure that the laws are faithfully executed under the Constitution. This separation of powers violation occurs because the ALJ presiding over the defendants' administrative proceeding below is an executive officer insulated from removal by two layers of good-cause tenure.

The case, which arises from an SEC enforcement action against registered investment adviser Timbervest, LLC and its four principals, 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. Although Congress has established a five-year limitations period for the enforcement of any civil fine, penalty, or forfeiture, the SEC continues to advance a series of arguments why that statute of limitations imposes virtually no constraints on its enforcement authority.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: “Recent experience shows that the SEC nearly always prevails in its own in-house proceedings, but is far less successful when it must defend its enforcement positions in federal court. If the SEC may influence the outcome of cases merely by pursuing complex and novel ones via internal agency administrative proceedings rather than in federal court, then the reach of federal securities law will increasingly turn on the caprice of the agency, not the will of Congress.”

*WLF is a national, public-interest law firm and policy center that regularly litigates to ensure that unwarranted securities enforcement actions do not hamper free markets and harm investors.*