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Relying on Appointments Clause, Supreme Court Vacates SEC's Unconstitutional Enforcement Action

(Lucia v. Securities and Exchange Commission)

“If the SEC’s constitutional violations could be swept aside because it could simply ratify unconstitutional acts by its improperly appointed ALJs, then there would be very little incentive to comply with the Appointments Clause in the future. By requiring a new ALJ to hold a new hearing, today’s ruling ensures that the Appointments Clause will not be rendered a dead letter.”

—Cory Andrews, WLF Senior Litigation Counsel

WASHINGTON, DC—The U.S. Supreme Court today vacated a final order of the U.S. Securities and Exchange Commission (SEC) that violated 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 decision was a victory for Washington Legal Foundation (WLF), which filed a brief in the case urging strict adherence to the Constitution’s structural protections, including the Appointments Clause.

Arising from an SEC enforcement action against registered investment adviser Raymond J. Lucia Companies, Inc. and its principal, the case 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 was made all the more troubling given that, as “Officers of the United States,” the SEC’s ALJs had long been 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 made clear, that violation of the Appointments Clause rendered the proceedings and resulting order against the *Lucia* petitioners unconstitutional. Given the gravity of that constitutional deficiency, WLF argued that the violation not only undermined the validity of the SEC’s underlying proceedings but required the SEC to start from scratch if it chooses to renew enforcement efforts against the petitioners. Today’s ruling adopted WLF’s view, explaining that because the ALJ decided Lucia’s case without a constitutional appointment, he may not now rehear the case as though he had not decided it before. Instead, “[t]o cure the constitutional error, another ALJ (or the Commission itself) must hold a new hearing.”

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

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