



For Immediate Release

Texas Federal Judge Expresses ‘Deep Concern’ with Potentially Unconstitutional ALJ Proceedings for NCLA Client

Washington, D.C. (March 28, 2019) — Today, the U.S. District Court for the Northern District of Texas recognized the inherent injustice in the administrative enforcement process the Securities and Exchange Commission (SEC) has issued against Michelle Cochran, a client of the New Civil Liberties Alliance (NCLA). The SEC’s administrative law judges (ALJs) lack the constitutional authority to hear cases, yet the agency has been forcing individuals to appear before them anyway.

Ms. Cochran has been subjected to one unconstitutional hearing already. On the heels of the Supreme Court’s decision in *Lucia v. SEC*, she is now being put through a second unconstitutional proceeding but is fighting the SEC’s effort in federal court.

Concluding that the court lacked subject matter jurisdiction, Judge John McBryde dismissed Ms. Cochran’s [complaint](#) against the SEC, but not before expressing deep concern for the pointless litigation journey that lies before her.

In his [Opinion](#), Judge McBryde wrote, “The court is deeply concerned with the fact that plaintiff has been subjected to extensive proceedings before an ALJ who was not constitutionally appointed and contends that the one she must now face for further, undoubtedly extended, proceedings likewise is unconstitutionally appointed. She should not have been put to the stress of the first proceedings, and, if she is correct in her contentions, she again will be put to further proceedings, undoubtedly at considerable expense and stress, before another unconstitutionally appointed administrative law judge.”

Unfortunately, the judge concluded that precedent requires that the case be dismissed for lack of jurisdiction. Even so, Judge McBryde added that were it not for the precedent that creates a jurisdictional issue, “the court would give serious consideration to [a] grant of plaintiff’s request for a preliminary injunction.”

Cochran’s case was one of dozens slated for reconsideration after the U.S. Supreme Court’s ruling last June in the case, *Lucia v. SEC* – which determined the SEC has been using unconstitutionally appointed ALJs. NCLA also represents Mr. Lucia in his post-Supreme Court litigation. Cochran and Lucia filed for injunctions in federal district court seeking the logical, commonsense relief that the question of the constitutionality of their ALJs be decided before those ALJs may try their cases.

“While we respectfully disagree with the Court that it lacks jurisdiction, we appreciate the Court’s deep concern for the possibility that the SEC is forcing individuals like Michelle Cochran to litigate before ALJs who lack constitutional authority to hear their cases.”—Steve Simpson, NCLA Senior Litigation Counsel

“Judge McBryde’s opinion recognizes that forcing Americans to undergo unconstitutional proceedings—and two levels of appeal—before they can vindicate their right to be tried before a lawful judge causes them to suffer the very constitutional injury they are suing to prevent. No rational system of justice would operate in this fashion.” —Peggy Little, NCLA Senior Litigation Counsel

NCLA will now appeal Cochran’s case to the Fifth Circuit Court of Appeals.

ABOUT NCLA

NCLA is a nonprofit civil rights organization 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 unchecked power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights. For more information visit us online: [NCLAlegal.org](https://www.NCLAlegal.org).

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