



FOR IMMEDIATE RELEASE

Media Inquiries: [Judy Pino](#), 202-869-5218

NCLA Asks Ninth Circuit Court of Appeals to Halt Unconstitutional SEC Hearing

Lucia vs. SEC

WASHINGTON, DC, December 4, 2019—The New Civil Liberties Alliance today filed a [motion](#) with the U.S. Court of Appeals for the Ninth Circuit asking it to enjoin an administrative proceeding by the U.S. Securities & Exchange Commission (SEC) against NCLA’s clients, Ray Lucia and the Raymond J. Lucia Companies, Inc. Specifically, NCLA wants the Ninth Circuit to stop the SEC hearing until the court can decide whether the district court has subject-matter jurisdiction to hear Mr. Lucia’s constitutional objection to the administrative law judge (ALJ) overseeing the SEC hearing.

The SEC first charged Mr. Lucia in 2012. Rather than bring its case in federal court or before the Commission itself, SEC chose to try him before an ALJ who was not constitutionally appointed. Since then, Mr. Lucia has endured six years of protracted litigation taking his case all the way to the U.S. Supreme Court—and winning—on the argument that the ALJ was improperly appointed. Instead of retrying the Lucia case before the Commission itself, the SEC is proceeding in front of another constitutionally defective ALJ—even though the U.S. Solicitor General told the Supreme Court in *Lucia v. SEC* two years ago that the agency’s ALJs are improperly insulated from removal.

NCLA believes the district court erred in concluding it lacked jurisdiction to hear Mr. Lucia’s objections to the SEC’s unconstitutional hearing. As NCLA’s motion shows, the 2018 decision in *Lucia* held that SEC’s ALJs are “officers” of the United States, thereby changing the legal landscape. Under an earlier precedent called [Free Enterprise Fund v. Public Co. Accounting Oversight Board](#), the Supreme Court made clear that officers of the U.S. may not be insulated from removal by multiple layers of tenure protection without running afoul of the clause in Article II of the Constitution that requires the President to “take Care that the Laws be faithfully executed.” The President cannot fulfill that obligation if he cannot remove ALJs who are failing to discharge

their duties adequately.

NCLA is taking the SEC to task for needlessly prolonging Mr. Lucia's case with a pointless SEC hearing that is destined to be vacated. NCLA recently obtained an [injunction](#) from the Fifth Circuit for client Michelle Cochran, who similarly faced the prospect of enduring a second unconstitutional SEC proceeding.

“Ray Lucia has already been put through six years and five layers of appeal all the way to the Supreme Court to vindicate his right to be tried before a lawful judge. Despite its own admission that SEC ALJs still enjoy excessive, unconstitutional layers of tenure protection, the SEC is repeating that fiasco by, incredibly, insisting on re-trying Ray before another constitutionally defective ALJ. This isn't exhaustion of remedies—it's annihilation by administrative process.”

—**Peggy Little, Senior Litigation Counsel**

“Ray Lucia has been put through the ringer and then some. The Ninth Circuit should allow the constitutional questions to be resolved now rather than subject Ray to yet another constitutionally defective SEC proceeding.”

—**Mark Chenoweth, Executive Director & General Counsel**

ABOUT NCLA

NCLA is a nonprofit civil rights organization founded by 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. For more information visit us online: NCLAlegal.org.