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Six *Amici Curiae* File in Support of NCLA Constitutional Case Against SEC Administrative Law Judges

Christopher M. Gibson v. U.S. Securities and Exchange Commission

Washington, DC (October 5, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group draws strong support for its [petition for a writ of certiorari](#) to the U.S. Supreme Court in the case of *Christopher M. Gibson v. U.S. Securities and Exchange Commission*.

Six briefs *amici curiae* were filed today in support of NCLA’s petition, asking the highest court in the land to review a decision of the United States Court of Appeals for the Eleventh Circuit. At issue is whether individuals like NCLA’s client, Mr. Gibson, may gain access to a federal court to vindicate structural constitutional claims that directly impact individual liberty *before* they must run the entire gauntlet of agency administrative proceedings.

NCLA believes the Eleventh Circuit panel erred in concluding the district court lacked jurisdiction to hear Mr. Gibson’s objections to the unlawful layers of protection from removal by the President that SEC administrative law judges (ALJs) enjoy.

NCLA released the following statement:

“The amicus briefs submitted in support of Christopher Gibson’s petition make a compelling case that SEC, through a pattern of taking legally erroneous positions, is willing to tie up those whom it charges in an endless loop of repetitive administrative hearings that deprives them of due process and their civil liberties for years. These amicus briefs forcefully argue that the Supreme Court must stop this abuse of power.”

– **Peggy Little, NCLA Senior Litigation Counsel**

Excerpts from the briefs *amici curiae* submitted in support of NCLA’s Cert. Petition:

“The agency seeking to barricade the courthouse doors in this case—the SEC—is no stranger to this Court. Over the past decade, the Court has granted certiorari to hear four separate challenges to long-standing SEC statutory interpretations that were not within the agency’s core expertise. In all four cases the Court concluded that the SEC had erred, sometimes for decades and sometimes with the agreement of the lower courts. ... As this case illustrates, the SEC is again steering lower courts astray on an important legal issue that is beyond the agency’s competence.”

—[Cato Institute, Competitive Enterprise Institute and the U.S. Chamber of Commerce](#)

“Petitioner Gibson is one of many citizens who has been investigated, prosecuted, and subjected to a hearing—all within a single agency in a single branch of government. Worse, many of the agents who oversee these

proceedings are insulated by two layers of protection from removal. ... The [Supreme] Court’s decision in *Free Enterprise Fund v. Public Co. Accounting Oversight Board*, 561 U.S. 477 (2010) demands the opposite result. ... [C]ertiorari is needed to clarify *Free Enterprise Fund* and, more importantly, to ensure federal courts retain their vital role as a check on executive overreach.”

—[Southeastern Legal Foundation](#)

“The jurisdictional issue presented by this appeal is ... whether justice delayed is justice denied ... [whether a] violator must weather a ferocious and protracted administrative storm, and suffer whatever damage in the form of monetary and other penalties the SEC ALJ inflicts, *before* pursuing a substantial, precedent-backed claim challenging SEC ALJs’ constitutional legitimacy. ... The draconian financial penalties and career-ending suspensions and debarments that the SEC imposes on *hundreds* of individuals every year—either by ratifying nearly all of its ALJs’ decisions or coercing settlement agreements to which alleged securities law violators accede under duress—further illuminate the reasons why certiorari should be granted in this case.”

—[Atlantic Legal Foundation](#)

“If the decision below is allowed to stand, the hundreds of Americans who are compelled each year to defend themselves in SEC administrative proceedings will have no meaningful opportunity to contest in federal court the constitutionality of the SEC’s proceedings. ... Americans should not have to wait in line for the better part of a decade before courts adjudicate their constitutional disputes with the government.”

—[George R. Jarkesy, Jr.](#)

“[T]he SEC seeks to deprive Petitioner of private rights through an in-house administrative action overseen by an SEC-employed administrative law judge. ... Under the Constitution, these matters are reserved for resolution in the Judicial Branch. When ... litigants are required to slog through one or, upon an administrative appeal, two Executive Branch judicial adjudications before they may access an Article III court, they are denied their long-standing due process right against arbitrary deprivation of private rights.”

—[Pacific Legal Foundation](#)

“[The circuit courts’] error is pernicious, self-replicating, and should not be allowed to stand. The [Supreme] Court should grant review here to clarify ... that [case law] does not require the federal judiciary to look away from rogue administrative action that violates individuals’ federal constitutional rights. ... If the SEC removal scheme is unconstitutional, it is unconstitutional. Let the chips fall where they may. But it is no answer to bob and weave to duck the merits of that question, whether out of solicitude to the administrative state or otherwise. ... This is particularly unfair where, as here, the agency not only lacks relevant expertise but has already decided the issue on the merits against Petitioner.”

—[Americans for Prosperity Foundation](#)

Read Case Summary [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group 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 unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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