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NCLA Asks Supreme Court to Address Constitutional Defect in SEC Administrative Law Judges

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

Washington, DC (December 21, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, today filed a [reply brief](#) related to 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*. The brief, lead authored by former U.S. Solicitor General Greg Garre, explains why the Court must answer the question presented in the case. Namely, has Congress by implication eliminated the ability for people who become the targets of administrative action to access federal district courts to hear structural constitutional challenges to the very legitimacy of the Administrative Law Judges (ALJs) presiding over their cases?

The case directly affects hundreds of SEC enforcement actions brought each year—and Americans’ rights to enforce the Constitution in real courts. Targets like NCLA client Christopher Gibson in [this case](#), and Michelle Cochran in [Cochran v. SEC](#), are shedding light on the dangers posed by the Administrative State. NCLA argues that the U.S. Supreme Court unequivocally held in [Free Enterprise Fund v. PCAOB](#) that officers of the United States—like SEC ALJs— may enjoy only one layer of for-cause removal protection. Otherwise, the President’s Article II duty to ensure that federal officers are doing their jobs is unduly restricted.

The SEC’s scheme fails to follow two controlling Supreme Court decisions: *Free Enterprise Fund* and [Thunder Basin v. Reich](#). The SEC essentially ghosts *Free Enterprise Fund*, relegating it to a single paragraph at the end of its [response brief](#). The stark conflict between the erroneous decision of the Eleventh Circuit and *Free Enterprise Fund*, which unanimously held that district courts do have jurisdiction to hear removal-based constitutional challenges, alone warrants *certiorari*. Furthermore, *Thunder Basin* instructs that courts must hear claims that cannot be meaningfully reviewed later, are wholly collateral, and are outside agency competence and expertise—as in this case. The SEC’s pattern of ignoring such precedents must be corrected.

In its reply, NCLA also points out that because five circuits from across the country have held that district courts lack jurisdiction over a critical class of structural constitutional claims, such recurring error has eliminated a vital check on unconstitutional administrative action.

To right this wrong, NCLA is asking the Supreme Court to grant the petition for a *writ of certiorari* and stop this abuse of power by SEC. Mr. Gibson must be allowed to gain access to a federal court to vindicate structural constitutional claims that directly impact individual liberty. Otherwise, he will almost certainly have to pay a six-figure fine before ever getting to present his constitutional arguments to a real federal judge. That result would be neither just nor constitutional.

NCLA released the following statement:

“Federal appellate courts have required Americans to undergo a punishing, years-long gauntlet before they can even challenge the constitutionality of wayward administrative proceedings. This makes no sense. Christopher Gibson has already endured one unconstitutional in-house hearing, is in the midst of a second that should be set aside, and now faces the prospect of a third one years from now for the same alleged offense. The Supreme Court should enforce its prior decisions and course-correct the circuits’ costly and ruinous march of error.”

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

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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