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

**NCLA Celebrates U.S. Sup. Ct. Cert. Grant in *Securities and Exchange Commission v. Michelle Cochran***

*Securities and Exchange Commission v. Michelle Cochran*

**Washington, DC (May 17, 2022)** - The U.S. Supreme Court has granted *certiorari* in *Securities and Exchange Commission v. Michelle Cochran*. The Court will review a Fifth Circuit *en banc* decision that [ruled](#) Texas accountant Michelle Cochran has the right to challenge the constitutionality of her Administrative Law Judge's (ALJ) removal protections in federal court *before* undergoing an administrative adjudication. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, represents Ms. Cochran, who originally [filed suit](#) against the Securities and Exchange Commission in January 2019 to challenge SEC's system of adjudicating enforcement actions with tenure-protected ALJs employed by the prosecuting agency. NCLA's lead counsel on the case is Peggy Little, who successfully argued it before the *en banc* Fifth Circuit. The [Brief for Respondent](#) was filed with valuable assistance from Latham & Watkins LLP. Latham partner Greg Garre, a former Solicitor General of the United States, is Counsel of Record, representing Ms. Cochran.

When Ms. Cochran filed suit in January 2019, five federal courts of appeal had held that SEC targets must first subject themselves to an unconstitutional tribunal before they can challenge this scheme. Because Ms. Cochran prevailed at the Fifth Circuit *en banc* proceedings, the circuits are now split on the precise question presented by the lawsuit: whether a federal district court has jurisdiction to hear a suit to enjoin an SEC proceeding based on a constitutional defect with removal protections for the administrative law judge (ALJ) conducting the proceeding. That question is vitally important to the hundreds of litigants ensnared in SEC administrative proceedings before ALJs who are unconstitutionally insulated from removal by the President. Currently, ALJs can only be removed for cause, and the only people who can remove them are SEC Commissioners and then in turn, Merit Systems Protection Board members—all of whom enjoy “for cause” protections from removal by the President.

In January 2022, just three weeks after the Fifth Circuit split with its sister circuits, the Supreme Court granted review in *Axon Enterprise, Inc. v. FTC*, which presents the same district court jurisdiction question in the context of the administrative review scheme under the Federal Trade Commission Act. NCLA strongly supports Axon's position in seeking federal court jurisdiction over the structural constitutional claim in that case. SEC, represented by the Solicitor General, later asked the Supreme Court simply to hold *Cochran* pending a decision in *Axon* and dispose of it in light of that decision. But, explained in Ms. Cochran's [response brief](#) to the Supreme Court, a decision under the FTC statute would not necessarily decide the SEC question presented by the *Cochran* case, leaving hundreds of Americans like Michelle Cochran who are subject to pending SEC administrative proceedings in limbo. By granting cert in *Cochran*, the Supreme Court can now fully resolve the SEC circuit split, ensure that circuits across the country currently barring federal court review are conclusively overturned by the Court's decision, and guarantee that individuals like Ms. Cochran who are caught up in the SEC administrative process are not forced to undergo protracted, predestined-to-be-vacated administrative proceedings.

The *Cochran* case is NCLA's first original lawsuit to be granted cert. It has been just over four years since NCLA's first court filing, on February 28, 2018, in *Lucia v. SEC*, to today's grant of *certiorari* in the U.S. Supreme

Court. The New Civil Liberties Alliance currently has three other cases pending certiorari in the U.S. Supreme Court: *Aposhian v. Garland*, *Buffington v. McDonough*, and *Romeril v. SEC*.

**NCLA and Latham & Watkins released the following statements:**

“We are thrilled that the Supreme Court has granted cert. to review Michelle Cochran’s right to federal district court jurisdiction to challenge SEC Administrative Law Judges’ multiple—and thus unconstitutional—layers of tenure protection. Federal courts have an unflagging duty to enforce the Constitution *before* Americans like Michelle must endure years-long administrative adjudications that are predestined to be vacated on constitutional grounds.”

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

“NCLA is tremendously grateful to Michelle Cochran for her willingness to fight this important fight and to Greg Garre and his terrific team at Latham & Watkins, who are helping NCLA represent Michelle at the U.S. Supreme Court. Yesterday’s grant of certiorari ensures that the Court will hear all the reasons why the SEC must not be allowed to continue using its unconstitutional ALJ tribunals to violate the civil liberties of enforcement targets.”

— **Mark Chenoweth, President and General Counsel, NCLA**

“We are pleased with the Supreme Court’s decision to grant review in this important case. Federal courts have long served as a critical safeguard against unconstitutional actions by government actors, and recognizing federal court jurisdiction over structural constitutional challenges to agency proceedings is vital to protecting the individual liberty of individuals like Michelle Cochran who find themselves enmeshed in administrative proceedings and holding government regulators accountable. We look forward to presenting our arguments to the Court.”

— **Gregory G. Garre, Partner, Latham & Watkins**

**For more information visit the case page [here](#) or watch the case video [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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