No. 21-1239

In The

Supreme Court of the United States

SECURITIES AND EXCHANGE COMMISSION, ET AL.,

Petitioners,

v.

MICHELLE COCHRAN,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF ATLANTIC LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

LAWRENCE S. EBNER
Counsel of Record
ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Ave., NW
Washington, DC 20006
(202) 729-6337
lawrence.ebner@atlanticlegal.org

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitution, Statutes, & Regulation

Other Authorities

INTEREST OF THE *AMICUS CURIAE* [1]

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, nonpartisan, public interest law firm whose mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and parental rights in education, including school choice. With the benefit of guidance from the distinguished legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, the Foundation pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. *See* atlanticlegal.org.

* * *

This appeal, like *Axon Enterprise, Inc. v. Federal Trade Commission*, No. 21-86, involves an access-to-justice issue that potentially affects every individual or business caught in an independent federal regulatory agency's civil enforcement crosshairs. The district court "jurisdiction stripping" questions presented in these cases implicate individual liberty,

---

[1] Petitioners' and Respondent's counsel have lodged blanket consents to the filing of amicus briefs. In accordance with Supreme Court Rule 37.6, *amicus curiae* Atlantic Legal Foundation certifies that no counsel for a party authored this brief in whole or part, and that no party or counsel other than the *amicus curiae* and its counsel made a monetary contribution intended to fund preparation or submission of this brief.

limited and responsible government, and free enterprise, as well as due process and civil justice. For this reason, ALF has an abiding interest in the question of whether district courts can exercise federal question jurisdiction over constitutional challenges to the structure of Securities and Exchange Commission (SEC) or Federal Trade Commission (FTC) administrative enforcement proceedings. ALF's petition-stage and merits-stage amicus briefs in *Axon Enterprise*, as well as the petition-stage brief that ALF filed in *Gibson v. SEC*, No. 20-276, discuss why justice delayed is justice denied if a civil enforcement target must first suffer the irreparable harms inflicted by an unconstitutional administrative forum in order to later challenge its legitimacy in an Article III court.

INTRODUCTION

This brief complements ALF's merits-stage amicus brief in *Axon Enterprise*. That brief explains why, under this Court's precedents, delayed judicial review of structural constitutional claims in a court of appeals following an adverse final order in an FTC administrative adjudication cannot be meaningful for purposes of precluding district court federal question jurisdiction. *See Free Enterprise Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 489 (2010); *Elgin v. Dep't of the Treasury*, 567 U.S. 1, 15 (2012); *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 212-13 (1994). ALF's *Axon Enterprise* brief also explains that the FTC's extensive use of consent decrees to resolve enforcement complaints without an adjudicatory hearing heightens the need for exercise of district

court jurisdiction over structural constitutional claims.

The same jurisdiction-stripping concerns apply to the SEC. Both Circuit Judge Haynes' en banc majority opinion, and Circuit Judge Oldham's concurring opinion, persuasively demonstrate that stripping district courts of federal question jurisdiction would deprive Respondent Cochran and similarly situated SEC enforcement targets of any meaningful judicial review of, or remedy for, structural constitutional claims—here, Cochran's claim that the multiple-layer, for-cause removal protection afforded to SEC administrative law judges (ALJs) violates the Executive Vesting Clause, U.S. Const. art. II, §1, cl. 1. *See* Pet. App. 23a-28a (majority opinion); 74a-76a (Oldham, J., concurring).

Further, the SEC, like the FTC, resolves the vast majority of administrative enforcement complaints by coercing defendants into acceding to onerous, well-publicized consent decrees that are not only based on unproven allegations, but also often premised on judicially untested legal theories. *See* Priyah Kaul, Note*, Admit or Deny: A Call for Reform of the SEC's "Neither-Admit-Nor-Deny" Policy,* 48 U. Mich. J. L. Reform, 535, 536 (2015) ("[T]he [SEC] Division of Enforcement almost never litigates. Instead, it settles. Since 2002, the SEC's settlement rate has remained constant at about ninety-eight percent."); Urska Velikonja, *Are the SEC's Administrative Law Judges Biased? An Empirical Investigation*, 92 Wash. L. Rev. 315, 365 (2017) (reporting that between 2007

and 2015, "the relative share of cases filed as settled in the administrative forum [was] 80%").

Because most SEC administrative complaints are settled rather than litigated, any opportunity for judicial review of constitutional claims challenging the structure of the SEC administrative enforcement scheme would be severely limited if such review is available only in a court of appeals following an adjudicatory hearing conducted by an SEC ALJ. *See* 15 U.S.C. § 78y(a)(1) (Securities Exchange Act provision limiting court of appeals review to "a person aggrieved by a final order of the Commission"); Pet. App. 28a n.15 ("'[T]he incentive to settle SEC enforcement actions [makes] it, practically speaking, extremely unlikely for defendants to . . . have the opportunity to appear before a federal court.'") (quoting Adam M. Katz, Note, *Eventual Judicial Review*, 118 Colum. L. Rev. 1139, 1153 (2018)); *see also* Velikonja, *supra* at 365 ("Defendants' willingness to settle may be affected by their perception that ALJs are less fair" than district court judges.).

Rather than elaborating on these points, this brief focuses on why claims that challenge the constitutional legitimacy of SEC administrative enforcement proceedings are outside the agency's competence and expertise, and thus, under *Free Enterprise Fund*, should not have to await the virtually inevitable adverse outcome of an SEC in-house adjudication before being heard by an Article III court.

SUMMARY OF ARGUMENT

The importance of the jurisdiction-stripping issue in this appeal is underscored by the fact that the SEC is the most aggressive independent regulatory agency in the federal government. *See, e.g.*, Gurbir S. Grewal, Dir., Div. of Enf't, Remarks at Securities Enforcement Forum West 2022 (May 12, 2022) ("[S]ince day one, I've been asking staff to look for ways in which to push the pace of our investigations.");[2] Chris Prentice, *Wall Street enforcement to get tougher as SEC's new top cop gets to work*, Reuters, July 26, 2021.[3] The SEC "filed 434 new enforcement actions in fiscal year 2021, representing a 7 percent increase over the prior year."[4] Of the total 649 enforcement actions filed during FY 2021 (including "delinquent" and "follow-on" actions), 471 were in-house administrative proceedings,[5] which "unlike court proceedings, are subject to relaxed rules of evidence and procedure." Douglas H. Ginsburg & Steven Menashi, *Our Illiberal Administrative Law*, 10

---

[2] Available at https://www.sec.gov/news/speech/grewal-remarks-securities-enforcement-forum-west-051222.

[3] Available at https://www.reuters.com/business/finance/wall-street-enforcement-get-tougher-secs-new-top-cop-gets-work-2021-07-26/.

[4] Div. of Enf't, SEC, Press Release, *SEC Announces Enforcement Results for FY 2021* (2021-238) (November 18, 2021), available at https://www.sec.gov/news/press-release/2021-238.

[5] *See* Addendum to Enforcement Division Press Release, Fiscal Year 2021, available at https://www.sec.gov/files/2021-238-addendum.pdf.

N.Y.U. J. L. & Liberty 475, 509 (2016). These newly filed actions, most of which likely will be settled through consent decrees rather than litigated, "spanned the entire securities waterfront."[6]

The SEC's statutory waterfront "is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation."[7] Nothing in this regulatory mission, or in the statutes that the SEC enforces, involves adjudicating structural constitutional claims, such as Respondent Cochran's constitutional challenge to the legitimacy of SEC ALJ-conducted enforcement proceedings.

In its en banc opinion, the Fifth Circuit, consistent with *Free Enterprise Fund*, correctly recognized that the SEC's securities law expertise has no bearing, and can shed no light, on Cochran's structural constitutional challenge to the for-cause removal protection enjoyed by SEC ALJs. *See* Pet. App. 22a-23a; *see also id.* 76a-78a (Oldham, J., concurring). As a result, the *Thunder Basin* "agency expertise" factor counsels against preclusion of district court federal question jurisdiction over Cochran's constitutional claim.

The dissenting opinion misreads *Elgin* by adopting an expansive view of "agency expertise" for jurisdiction-stripping purposes. According to the

---

[6] Div. of Enf't, SEC, Press Release, *supra.*

[7] About the SEC, https://www.sec.gov/about.shtml (last visited June 6, 2022).

dissent, the SEC's securities law expertise supports preclusion because Cochran (despite the SEC's widely reported 90% in-house win rate) *might* prevail before an SEC ALJ and/or the SEC Commissioners on the merits of the Commissioners' pre-approved enforcement allegations, thereby mooting, or obviating any need to pursue, her structural constitutional challenge. *See* Pet. App. 106a-107a (Costa, J., dissenting).

This speculative premise bears no resemblance to reality. Cochran's claim is purely constitutional; it has nothing to do with securities law or the SEC's technical expertise. An ALJ adjudication of the SEC's allegations, followed by an in-house appeal to the Commissioners who authorized the filing of the administrative complaint, in no way would resolve Cochran's constitutional claim. Instead, it would inflict upon her the irreparable constitutional harm she seeks to avoid through a district court action.

Further, a high percentage of SEC administrative enforcement targets "choose" to enter into SEC Enforcement Division-dictated consent decrees involving substantial monetary penalties, professional bars or suspensions, and other harsh sanctions. Most businesses and individuals confronted with the Hobson's choice of acceding to an SEC consent decree or litigating in the SEC's internal court do not want (or cannot afford) to participate in a costly (often multi-million dollar), burdensome (resource-intensive and business-disruptive), lengthy (often years-long), administrative adjudication that they have good reason to believe is stacked against

them from the outset. Given the hundreds of businesses and individuals that the SEC targets every year, Cochran's Supreme Court precedent-backed structural constitutional claim will continue to infect the SEC administrative enforcement scheme even if Cochran somehow were to persuade an SEC ALJ and/or the SEC Commissioners that the SEC's allegations against her are not well founded.

ARGUMENT

The SEC Possesses No Special Expertise That Warrants Stripping District Courts of Federal Question Jurisdiction Over Structural Constitutional Claims

A. The Fifth Circuit en banc majority correctly held that structural constitutional claims are outside the SEC's competence and expertise

The Fifth Circuit en banc majority squarely rejected the SEC's contention that "Congress implicitly stripped district courts of jurisdiction to hear structural constitutional claims under § 78y." Pet. App. 5a. The court of appeals concluded (i) that § 78y "did not explicitly or implicitly strip the district court of jurisdiction over Cochran's claim," (ii) that in *Free Enterprise Fund*, "[t]he Supreme Court has already rejected the SEC's precise jurisdictional argument under § 78y," and (iii) that the "*Thunder Basin* factors . . . do not warrant departing from the statutory text or deviating from the Supreme Court's interpretation of § 78y." *Id.* 5a-6a.

Under *Thunder Basin* courts "presume that Congress does not intend to limit [district court] jurisdiction if 'a finding of preclusion could foreclose all meaningful judicial review'; if the suit is 'wholly collateral to a statute's review provisions'; and if the claims are 'outside the agency's expertise.'" *Free Enter. Fund*, 561 U.S. at 489 (quoting *Thunder Basin*, 510 U.S. at 212-13 (1994)); *see also* Pet. App. 16a-18a (discussing *Thunder Basin*).

As to the agency expertise factor, the en banc Fifth Circuit found that "Cochran's removal power claim is outside the SEC's expertise," and thus, "weighs against preclusion." *Id.* at 22a, 23a. "[H]er claim does not depend on any special understanding of the securities industry. . . . Nor is there any suggestion that the SEC is an experienced adjudicator of structural constitutional issues." *Id.* at 22a-23a (citing *Carr v. Saul*, 141 S. Ct. 1352, 1360 (2021)).

The petitioners in *Carr* were unsuccessful Social Security disability claimants who sought new ALJ hearings in light of *Lucia v. SEC*, 138 S. Ct. 2044 (2018) (holding that SEC staff-appointed ALJs were federal officers not appointed in accordance with the Constitution). The Social Security Administration (SSA) exhaustion-of-remedies question presented in *Carr* was whether "petitioners forfeited their Appointments Clause challenges by failing to make them first to their respective ALJs." 141 S. Ct. at 1356.

In holding that the petitioners had not forfeited their constitutional claims, the Court explained in *Carr* that it "has often observed that *agency*

adjudications are generally ill suited to address structural constitutional challenges, which usually fall outside the adjudicators' areas of technical expertise." *Id.* at 1360 (citing *Free Enter. Fund*, 561 U.S. at 481 and other cases) (emphasis added); *see also id.* at 1361 ("Petitioners assert *purely constitutional claims* about which SSA ALJs have *no special expertise* and for which they can provide no relief.") (emphasis added).

The same is true here. Cochran's "claims [are] outside the Commission's competence and expertise." *Free Enter. Fund*, 561 U.S. at 491. Whether SEC ALJs' for-cause removal protection violates the separation of powers is purely a constitutional question, and the SEC's securities law expertise has no bearing on it. Indeed, when the SEC Commissioners opined on the constitutionality of the manner in which ALJs had been appointed, they got it wrong. *See Lucia*, 138 S. Ct. at 2050.

"The SEC has statutory authority to enforce the nation's securities laws." *Id.* at 2049. No statute suggests that the SEC has authority to adjudicate constitutional challenges to its own administrative enforcement scheme. Nor is there any suggestion in the extensive list of ALJs' enumerated powers set forth in the Administrative Procedure Act, 5 U.S.C. § 556(c), or in the SEC's implementing Rules of Practice, 17 C.F.R. § 201.111, that Congress intended ALJs, who are primarily triers of fact, to opine on wholly collateral, structural constitutional claims, such as Cochran's claims here. Cochran seeks district court review only of her structural constitutional claim relating to SEC ALJs' removal protection; she

"does not ask the court to resolve facts related to the SEC's charges against her, nor any legal issues involving securities laws." Linda D. Jellum, *The SEC's Fight to Stop District Courts from Declaring Its Hearings Unconstitutional* (Jan. 1, 2022), Tex. L. Rev. (forthcoming) (manuscript at 56).[8]

B. The dissenting opinion's overly broad concept of agency expertise does not warrant delaying judicial review of structural constitutional claims

In his concurring opinion, Judge Oldham observed that *Carr* is "[t]he key case here" on the *Thunder Basin* agency expertise factor. Pet. App. 76a (Oldham, J., concurring). Circuit Judge Costa's dissenting opinion acknowledges that "[p]urely legal questions that are not interpretations of the agency's statute or regulations—like issues of constitutional law—do not generally benefit from agency expertise." Pet. App. 106 (Costa, J., dissenting) (citing *Thunder Basin*, 510 U.S. at 215 ("[W]e agree that adjudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies.") (internal quotation marks omitted)).[9]

---

[8] Available at https://tinyurl.com/ywjzyejh.

[9] The Court observed in *Thunder Basin*—which involved a due process challenge to a company-specific compliance directive issued by the Department of Labor's Mine Safety and Health Administration—that "[t]his rule is not mandatory, however, and is perhaps of *less consequence where, as here, the reviewing body*

According to the *Cochran* dissent, however, "the Supreme Court's most recent instruction is that we should not just consider whether the agency has expertise with respect to the particular claim the plaintiff wants to resolve in district court." *Id.* (citing *Elgin*, 567 U.S. at 23). The dissent asserts that "[t]he benefit of agency expertise should instead be assessed by looking at the overall case, so this factor accounts for the possibility that the agency's resolution of other issues 'may obviate the need to address the constitutional challenge.'" *Id.* (quoting *Elgin*, 567 U.S. at 22-23).

This reads too much into *Elgin*'s discussion of the *Thunder Basin* agency expertise factor. The *Elgin* petitioners were former federal employees who were terminated because they failed to register for the military draft. They filed a putative class action in district court seeking affirmative relief in the form of

---

is not the agency itself, but an *independent* Commission established exclusively to adjudicate [Federal] Mine [Safety] Act disputes." 510 U.S. at 215 (emphasis added). More specifically, the Court was referring to the Federal Mine Safety and Health Review Commission, "which is *independent* of the Department of Labor." *Id.* at 204 (emphasis added).

In contrast, the reviewing body here, the SEC Commissioners, is anything but independent of the administrative enforcement complaints that it authorizes, and then, regardless of the outcome of an ALJ adjudicatory hearing, almost always enforces. *See* Ginsburg & Menashi, *supra* at 510; Richard A. Posner, *The Federal Trade Commission*, 37 U. Chi. L. Rev. 47, 53 (1969) ("It is too much to expect men of ordinary character and competence to be able to judge impartially in cases that they are responsible for having instituted in the first place.").

reinstatement and back pay, and to support their employment law action, argued that the registration requirement unconstitutionally discriminated on the basis of sex. This Court affirmed dismissal of the suit, holding that the Civil Service Reform Act (CSRA) provided an exclusive administrative remedy for the petitioners' wrongful termination claims.

The *Elgin* majority explained that "petitioners' constitutional claims are the vehicle by which they seek to reverse the [employment] removal decisions, to return to federal employment, and to receive the compensation they would have earned . . . . A challenge to [employment] removal is precisely the type of personnel action regularly adjudicated by the MSPB [Merit Systems Protection Board] and the Federal Circuit within the CSRA scheme." *Elgin*, 567 U.S. at 22. In this case-specific, affirmative-relief context, the Court indicated that the "petitioners overlook the many threshold questions that *may accompany a constitutional claim* and to which the MSPB can apply its expertise . . . preliminary questions *unique to the employment context* may obviate the need to address the constitutional challenge." *Id.* at 22-23 (emphasis added).

Here, in contrast to *Elgin* and *Thunder Basin*, there are no substantive threshold questions within the SEC's securities law expertise that accompany Cochran's constitutional claims. Instead, "[t]he nature of [Cochran's] challenge is structural—it does not depend on the validity of any substantive aspect of the Exchange Act, nor of any SEC rule, regulation, or order. Indeed, she is challenging the Exchange Act's

statutory-review scheme itself." Pet. App. 22a. "[T]here are no threshold issues that need resolving and the removal claim does not turn on knowledge of the security laws, so there is simply no expertise that the SEC can bring to the table." Jellum, *supra* at 57. Similarly, in *Free Enterprise Fund*, the petitioners' structural constitutional claim challenged the existence of the SEC-supervised Public Company Accounting Oversight Board (PCAOB). 561 U.S. at 490; *see* Pet. App. 24a (distinguishing *Free Enterprise Fund*, where the plaintiffs sought "structural relief" unrelated to the SEC's securities law expertise, from *Thunder Basin* and *Elgin*, where the plaintiffs sought "substantive relief" that implicated the relevant agencies' areas of expertise). As the en banc majority held, "*Free Enterprise Fund* is enough to decide this case." *Id.* at 16a.

The dissenting opinion's rationale for kicking the judicial review can down the road for as long as possible—the *remote* possibility that an SEC enforcement respondent "might prevail before the ALJ on nonconstitutional grounds," Pet. App. 107a (Costa, J., dissenting)—is oblivious to reality.

First, and not surprisingly, the SEC's success rate in administrative hearings conducted by its own ALJs has been reported to be approximately 90%. *See* Velikonja, *supra* at 348. Because most SEC enforcement targets are reluctant to attempt to defend themselves on SEC's actual or perceived tilted playing field, the dissenting opinion's premise that the availability of SEC ALJ proceedings on alleged securities law violations may render structural

constitutional challenges to those proceedings unnecessary is largely illusory.

"Congress gave *the SEC* the power to bring . . . actions for [alleged securities law violations] within the agency instead of in an Article III court whenever the SEC in its unfettered discretion decides to do so." *Jarkesy v. SEC*, 34 F.4th 446, 461 (5th Cir. 2022) (citing 15 U.S.C. § 78u–2(a)). Because Congress failed to provide the SEC with "a guiding intelligible principle" for exercising this authority, *id.*, the SEC, whenever it wishes, and apparently for any reason, can choose to prosecute its own civil enforcement complaints internally before its own ALJs under its own procedural and evidentiary rules, rather than filing a district court action. This "home-court advantage" is "an invitation to bias and a guaranteed appearance of bias." Ginsburg & Menashi *supra* at 509-10.

Indeed, "[w]hen the agency reviews and perhaps overrules the ALJ in a case the agency heads themselves authorized, the agency is both a party and the judge in its own case — an arrangement at odds with the most basic notion of due process that a party not be the judge in his own cause." *Id.* at 510. "[T]he incentive to settle SEC enforcement actions is therefore paramount, making it, practically speaking, extremely unlikely for defendants to endure several layers of SEC review in order to have the opportunity to appear before a federal court." Katz, *supra* at 1153; *see also id.* at 1153 n.52 (collecting authorities that discuss the incentive to settle rather than litigate SEC administrative enforcement complaints).

Second, the dissenting opinion, Pet. App. 106a, misplaces reliance on the supposedly "broader conception of agency expertise" that the panel majority in *Tilton v. SEC*, 824 F.3d 276 (2d Cir. 2016) read into *Elgin*. As Circuit Judge Droney explained in his *Tilton* dissent, "[t]o read *Elgin* as broadly as the majority does would mean that as long as a proceeding is ongoing, the 'outside the agency's expertise factor' *must* weigh against jurisdiction—because any time a proceeding has commenced, there is of course some possibility that a plaintiff may prevail on the merits." *Id.* at 296 (Droney, J., dissenting); *see also* Pet. App. 77a (Oldman, J., concurring) (the dissent "stacks the deck against judicial review" by its "overreading of *Elgin*"); Jellum, *supra* at 58 ("[T]he ability to moot is not expertise and certainly is not what either *Thunder Basin* or *Free Enterprise* envisioned. Further, were mootness the test for expertise, then this element would be present in every administrative proceeding, making it superfluous.").

Third, contrary to the dissent, a holding that district courts are not precluded from exercising federal question jurisdiction over structural constitutional claims such as those involved here (and in *Axon Enterprise*) would *not* "get[] constitutional avoidance backward." Pet. App. 107a. Constitutional disputes involving the structure of enforcement proceedings conducted in-house by the SEC or the FTC—two extraordinarily powerful independent regulatory agencies with expansive authority over American business and industry—should be resolved at the threshold by an Article III court, i.e., in the first

instance by a district court. Early judicial review is essential to ensure that individual and corporate enforcement targets are afforded due process of law. Instead, the dissenting opinion strains to find reasons for avoiding judicial review of threshold constitutional issues that will not disappear regardless of how individual defendants may fare in SEC administrative enforcement proceedings.

The case cited in the dissenting opinion, *Jones Brothers, Inc. v. Secretary of Labor*, 898 F.3d 669, 676 (6th Cir. 2018), does not support stripping district courts of federal question jurisdiction here, since "petitioner's case presents a true constitutional dispute." *Id.* At the least, Cochran, in light of this Court's holdings in *Free Enterprise Fund*, 561 U.S. at 494-514, and *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183, 2197 (2020), concerning the President's removal power, has raised a substantial constitutional issue about SEC ALJs' for-cause-only protection from removal. *See also Jarkesy*, 34 F.4th at 463 (holding that "the statutory removal restrictions for SEC ALJs are unconstitutional"). Because the SEC does not possess the authority, competence, or expertise to address this issue, there is no reason to delay judicial review of Cochran's structural constitutional claim while she is forced either to participate in the charade of defending herself in a likely unconstitutional (as well as biased) administrative forum, or to indelibly stain her own reputation by signing an SEC-devised consent decree.

Fourth, the dissenting opinion overlooks the far-reaching and recurring nature of Cochran's

constitutional claim. Her claim challenges the constitutional legitimacy of the same administrative forum that the dissent circularly contends might rule in a way that obviates the need for a court to address the forum's legitimacy. And even if Cochran somehow were able to convince an SEC ALJ, and then the SEC Commissioners, that the allegations in the administrative complaint that the Commissioners authorized to be filed against her were false, the issue of structural constitutionality would remain unresolved, and if valid, continue to inflict irreparable unconstitutional harm on myriad current and future SEC enforcement targets.

In short, the Court should hold that district courts can exercise their federal question jurisdiction over the type of structural constitutional claim that Respondent Cochran seeks to pursue.

CONCLUSION

The Fifth Circuit's judgment should be affirmed.

Respectfully submitted,

LAWRENCE S. EBNER
Counsel of Record
ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Ave., NW
Washington, D.C. 20006
(202) 729-6337
lawrence.ebner@atlanticlegal.org

July 2022