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Victory! U.S. Supreme Court Holds that Federal District Courts Have Jurisdiction to Hear Challenges to Unconstitutional Aspects of Federal Agencies’ Administrative Proceedings

Securities and Exchange Commission, et al. v. Michelle Cochran;
Axon Enterprise Inc. v. Federal Trade Commission, et al.

Washington, DC (April 14, 2023) – In an historic ruling, the U.S. Supreme Court this morning held that 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. Writing unanimously for the Court, Justice Kagan’s [opinion](#) stated, “The statutory review schemes set out in the Securities Exchange Act and Federal Trade Commission Act do not displace a district court’s federal-question jurisdiction over claims challenging as unconstitutional the structure or existence of the SEC or FTC.” “The ordinary statutory review scheme,” she wrote, “does not preclude a district court from entertaining these extraordinary claims.”

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, which represents Ms. Cochran in [Securities and Exchange Commission, et al. v. Michelle Cochran](#), commends the court for a decision that will allow our client to plead her case before a real Article III federal court rather than be subjected to an endless series of unlawful agency hearings. Michelle Cochran’s path to the U.S. Supreme Court began when she filed suit in federal district court to enjoin the SEC’s second round of administrative enforcement proceedings against her. Though SEC fixed the appointment problem *Lucia v. SEC* addressed, Ms. Cochran’s ALJ remained unconstitutional because SEC ALJs still enjoy multiple layers of “for cause” removal protection, a problem *Lucia* declined to reach and that SEC could not fix on its own—because the insulations from removal are statutory. NCLA also asserted that SEC violated Ms. Cochran’s due process rights by failing to adhere to its own rules and procedures.

The Supreme Court held that Ms. Cochran’s removal power claim, wholly collateral to the Exchange Act’s statutory-review scheme, is outside the SEC’s “sphere of expertise.” Justice Kagan emphasized this point, highlighting that Ms. Cochran’s claims “cannot receive meaningful judicial review through the ... Exchange Act.” Relying on the Supreme Court’s *Thunder Basin Coal Co. v. Reich* precedent, the Court held, “All three *Thunder Basin* factors thus point in the same direction—toward allowing district court review of Axon’s and Cochran’s claims that the structure, or even existence, of an agency violates the Constitution.”

In a strong concurring opinion, Justice Thomas wrote separately to express his “grave doubts about the constitutional propriety of Congress vesting administrative agencies with primary authority to adjudicate core private rights with only deferential judicial review on the back end.” Justice Thomas stated that if private rights are at stake—as they are in Ms. Cochran’s case—“the Constitution likely requires plenary Article III adjudication.” Justice Gorsuch wrote separately to say this case should have been decided solely on statutory grounds. He criticized the Court’s superimposing of a judicially created and hard to administer *Thunder Basin* balancing test on top of Congress’s text, and he pointed out how such a test had caused Ms. Cochran to suffer. Nonetheless, NCLA believes today’s unanimous ruling, strong concurrence from Justice Thomas and strong

concurrence in the judgment from Justice Gorsuch, will protect the civil liberty of citizens, like Ms. Cochran, to access federal courts when federal administrative agencies violate constitutional constraints on their power.

NCLA and Latham & Watkins released the following statements:

“Today is a victory for all Americans—especially targets of SEC or FTC administrative enforcement. For decades, Americans have been haled before agencies which act as investigator, prosecutor, judge *and* their first court of appeal. Whether that is constitutional is, as Justice Kagan notes at the outset, ‘fundamental, even existential.’ Michelle Cochran had the courage to insist that any hearing that put her CPA license at stake must be constitutional. And today the Supreme Court unanimously agreed that she is entitled to her day in court *before* the constitutional injury takes place.”

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

“We are thrilled that the Supreme Court has unanimously vindicated Michelle’s right to have her day in court to challenge the constitutionality of the administrative apparatus she has fought for nearly a decade against the SEC.”

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

“From the first hearing forward, it was clear that the odds were stacked against me. I am thrilled that every one of the Supreme Court justices agree that whether this costly, bruising and biased system is constitutional must be heard by a real judge *before* I have to undergo a second one. I have been stuck in this system for seven years, with everything, including my CPA license, at risk. I’m forever thankful for my incredible representation by NCLA and Latham & Watkins and everyone who has supported us along the way.”

— **Michelle Cochran, Plaintiff, *SEC et al. v. Michelle Cochran***

“Michelle Cochran and Ray Lucia are heroes for standing up to unconstitutional proceedings at the SEC. NCLA’s very first brief was filed just over five years ago in the *SEC v. Lucia* case. Today’s Supreme Court victory in *SEC v. Cochran* vindicates NCLA’s focus on unconstitutional practices that destroy people’s civil liberties. NCLA will make good use of this precedent to continue attacking unlawful administrative power at the SEC, the FTC, and other federal government agencies.”

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

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