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## **Hopelessly Compromised SEC Dismisses Dozens of Cases Due to Widespread Agency Misconduct**

**Washington, DC (June 5, 2023)** — The U.S. Securities and Exchange Commission (SEC) dismissed dozens of enforcement cases Friday, including two involving current NCLA clients ([Michelle Cochran](#), [Marian Young](#)) and one of a former client ([Christopher Gibson](#)). The agency [revealed](#) on June 2, 2023, that members of its enforcement staff had gained illicit access to confidential adjudicative documents and downloaded them in far more cases than originally reported, exposing rot in a hopelessly compromised in-house adjudication regime.

SEC publicly [admitted](#) in April 2022 to the existence of a so-called control deficiency within its administrative adjudication system. It said the agency's Chair had launched an internal review of the issue (using a contractor dependent on staying in SEC's good graces for its other agency business). At that time, the agency specifically divulged that SEC Division of Enforcement personnel had accessed adjudication material in the *SEC v. Cochran* case, temporarily making the material available to everyone in the Division, including attorneys who prosecuted Ms. Cochran on SEC's behalf. Now it turns out agency personnel had done the same thing in dozens more cases.

NCLA filed a federal court [Complaint](#) in November 2022, alleging that SEC failed to comply with FOIA requests, denying access to records concerning this same "control deficiency." On Friday, SEC announced its discretionary decision to dismiss more than 40 pending enforcement cases connected to the egregious problem. SEC said it dismissed the cases to conserve agency resources, but it appears to be trying to avoid scrutiny of its misconduct.

In April 2023, Ms. Cochran [won](#) her argument before the U.S. Supreme Court that she had the right to challenge the constitutionality of her Administrative Law Judge's (ALJ) removal protections in federal court before undergoing an administrative adjudication. This landmark ruling was a major victory for NCLA—and a major blow to SEC and to administrative adjudication generally. It freed Americans, many of whom had been trapped in interminable regulatory purgatory, to seek relief in federal court from these ersatz proceedings where the agency is prosecutor, judge, jury and first court of appeal. Now, rather than defend against allegations of unconstitutionality before real judges in real federal courtrooms, SEC has waved the white flag. This decision demonstrates just how significant the *Cochran* victory was. When forced to defend its unconstitutional conduct in front of Article III judges, SEC cannot. Indeed, it will not even try.

NCLA also filed a mandamus [petition](#) in April on behalf of Ms. Young and her company, asking the U.S. Court of Appeals for the Fifth Circuit to issue an order compelling the SEC Commissioners in *In re Marian P. Young and Saving2Retire, LLC* to either dismiss the case or else promptly decide the appeal in the agency's eight-year-old administrative matter. Rather than await the Fifth Circuit's ruling on NCLA's mandamus petition, SEC has now abandoned its administrative case against Ms. Young as well.

Finally, in January 2021, the Supreme Court denied NCLA's petition for a *writ of certiorari* in the case of Mr. Gibson. His first hearing before an unconstitutional SEC ALJ for allegedly violating securities laws was nullified following the court's 2018 *Lucia v. SEC* decision, but the agency subjected him to a second hearing before another defective ALJ. Immediately after the *Cochran* decision, Gibson sued in federal district court to vindicate his constitutional rights. SEC's strategic dismissals seek to deny Cochran, Young, and Gibson their day in court.

Despite its calculated decision to dismiss these cases, SEC must be held to account. NCLA will continue its efforts against the agency’s unconstitutional administrative proceedings system.

**NCLA released the following statements:**

“This is a strategic retreat by the SEC—a desperate attempt to avoid accountability for denying jury rights and spying on ALJs.”

— **Philip Hamburger, Chief Executive Officer and Founder of NCLA**

“SEC’s unprecedented dismissal of dozens of enforcement cases is a cynical ploy by the agency to avoid scrutiny of two things. First, SEC seeks to avoid creating precedent in some of these cases that would very likely hold that much of what SEC does in adjudications violates the Constitution. Second, SEC hopes to dodge further inquiry into its so-called control deficiency, which was not a fluke but rather the predictable consequence of locating prosecutorial and adjudicative functions in the same body. While dismissing these cases may slow down the reckoning that is coming for unconstitutional adjudication at the SEC and across the Administrative State, the reckoning is still coming. NCLA will accelerate our litigation plans to make sure of that.”

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

“Seven short weeks after the Supreme Court decision in *Axon/Cochran*, SEC just dismissed scores of cases that have been pending before the agency for years. This is undoubtedly because the *Axon/Cochran* decision threw open federal courthouse doors to provide sunlight and justice for constitutional challenges that Justice Kagan called “fundamental, even existential,” in her unanimous decision. SEC may hope that this gamesmanship will silence Michelle Cochran and other defendants from vindicating their rights to be tried in an Article III court, before a jury, with the full procedural and substantive guarantees promised in the Constitution. But this sweeping attempt to prevent delegitimization of agency adjudication will not avail. *Axon/Cochran* applies across agencies and in future actions where NCLA plans to continue to expose and put an end to the constitutional defects of agency adjudication.”

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

For more information visit [these case pages](#).

**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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