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Supreme Court Opens Courthouse Doors to Challenges Concerning Constitutionality of Federal Agency Review Process

Go-To Guide:

- The United States Supreme Court issues opinion clarifying that certain challenges to federal agency enforcement actions may be brought first in federal court.
- The Court rejected the federal government's arguments that even constitutional challenges must first be presented to administrative law judges at federal agencies.
- The opinion is the latest setback in the federal courts for federal agencies with respect to the use of administrative law judges.

The United States Supreme Court issued a unanimous decision (by way of a majority and concurring opinions) on April 14 that opens federal courthouse doors for entities and individuals seeking to challenge the constitutionality of the structure of federal agencies such as the FTC and the SEC.

In *Axon Enterprise, Inc. v. Federal Trade Commission et al.* and *Securities and Exchange Commission et al. v. Cochran*, the Court held that lawsuits challenging the constitutionality of a federal agency's review structure could be brought in the first instance in federal district court, rather than needing to be litigated and exhausted in administrative proceedings at the agencies themselves.

When bringing enforcement actions for violations of federal law, certain agencies such as the FTC and SEC may elect to institute administrative proceedings rather than proceed directly to federal court. Administrative proceedings at these agencies typically are held before an Administrative Law Judge (ALJ) with authority to issue a decision in the first instance. These ALJs can be removed from their positions only upon a showing of “good cause,” which ultimately must be found by another federal agency (the Merit Systems Protection Board) whose members themselves are removable only by the President for cause. The authority for such proceedings can be found in various federal laws, and the recourse for the subject of an enforcement action that seeks to challenge the ALJ’s decision in an FTC or SEC proceeding is to appeal to a federal appeals court.

But what happens when the subject of an administrative proceeding seeks to challenge the constitutionality of the proceeding itself, as the plaintiffs in *Axon* and *Cochran* sought to do? Did Congress strip federal district courts of their jurisdiction in cases where the legal challenge that is brought against a federal agency concerns constitutional arguments about the process itself and not the merits of an underlying case? Would stripping federal district courts of their jurisdiction to hear such cases in favor of the ALJ procedure and eventual review by a federal appeals court foreclose “meaningful judicial review”?

In the cases at hand, the FTC and SEC brought administrative proceedings against *Axon* and *Cochran* for alleged violations of federal law. *Axon* and *Cochran* both believed that the agencies’ ALJs who would preside over their cases were insufficiently accountable to the President, in violation of the Appointments Clause. Rather than wait for adverse agency decisions before obtaining judicial review, they brought suit in federal district court seeking to enjoin the ALJ proceedings. While the district court judges in both cases sided with the government in dismissing the lawsuits, the Fifth Circuit Court of Appeals overturned the district court’s decision in *Cochran*’s challenge to the SEC’s use of ALJs, and both cases were appealed to the U.S. Supreme Court.

Applying a three-factor test from *Thunder Basin Coal. Co. v. Reich*, 510 U.S. 200 (1994), The Supreme Court held that the claims were properly brought before the district courts in the first instance. In doing so, the Court examined the two statutes that created the relevant administrative processes: the FTC Act and the Securities Exchange Act. The Court reasoned that those laws did not intend to funnel constitutional claims concerning the structure of an agency and federal separation-of-powers through the ALJ process. First, requiring a party to assert structural constitutional challenges to an agency in an administrative proceeding and appeal the ultimate decision to a federal court of appeals could foreclose meaningful judicial review. Put another way, a person challenging the constitutionality of an administrative process should not have to undergo the lengthy and costly process only to learn, after the fact, that it was unconstitutional. The Court also found that the claims the plaintiffs raised had nothing to do with the enforcement-related matters that Congress authorized the agencies to adjudicate internally (with appeal to the appropriate circuit). On the contrary, the Court reasoned the constitutional claims were outside the expertise of the federal agencies who would therefore be ill-suited to address them.

Importantly, the Court did not address the underlying merits of the constitutional claims against either the FTC or the SEC’s administrative review scheme. However, this unanimous decision represents another instance of the Supreme Court siding against federal agencies in cases addressing constitutional concerns and the administrative review process. This opinion comes on the heels of *Lucia v. SEC*, in which the Supreme Court held an investment adviser was entitled to a new hearing regarding alleged violations of federal securities laws because the agency’s ALJs were not appointed in accordance with the requirements of the Constitution.

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