



## Supreme Court Rules That SEC ALJs Were Unconstitutionally Appointed

*Lucia v. SEC*, No. 17-130

Decided June 21, 2018

Today, the Supreme Court held that administrative law judges of the Securities and Exchange Commission are inferior “Officers of the United States” within the meaning of the Constitution’s Appointments Clause. Thus, the ALJs were unconstitutionally appointed by SEC staff.

### Background:

The SEC has relied on ALJs to resolve hundreds of enforcement actions. Raymond Lucia challenged the lawfulness of sanctions that the SEC had imposed on him, arguing that the ALJ hearing his case was not constitutionally appointed. He asserted that SEC ALJs are “Officers of the United States” under the Constitution’s Appointments Clause, which requires such officers to be appointed by the President, “Courts of Law,” or “Heads of Departments.” SEC ALJs, however, were appointed by agency staff. A panel of the D.C. Circuit held that the ALJs are mere “employees”—governmental officials with lesser responsibilities than “Officers” and thus not subject to the Appointments Clause. An evenly divided en banc court affirmed.

### Issue:

Whether SEC ALJs are “Officers of the United States” subject to the Appointments Clause.

### Court’s Holding:

Yes. Because SEC ALJs exercise “significant authority pursuant to the laws of the United States,” they are inferior “Officers” under the Appointments Clause. As such, the ALJs may not be appointed by agency staff and must instead be appointed by the President, the SEC itself, or a court of law.

*“[T]he Commission’s ALJs issue decisions containing factual findings, legal conclusions, and appropriate remedies. . . . And when the SEC declines review (and issues an order saying so), the ALJ’s decision itself ‘becomes final’ and is ‘deemed the action of the Commission.’”*

Justice Kagan,  
writing for the Court

**Gibson Dunn  
represented the  
winning party:**

*Raymond Lucia*

## What It Means:

- The ruling largely rests on the Court's conclusion that SEC ALJs are "near-carbon copies" of special trial judges of the Tax Court that the Court had previously found were inferior "Officers" because they exercise "significant authority." See *Freytag v. Commissioner*, 501 U.S. 868 (1991).
- The ruling provides new guidance on the relief available for litigants who make a timely Appointments Clause challenge: The Court ordered the SEC to provide Mr. Lucia a new hearing before a different ALJ who has been constitutionally appointed, reasoning that the ALJ who originally presided over Mr. Lucia's case could not be expected to consider the case "as though he had not adjudicated it before."
- Before the Court issued its decision, the SEC released an order purporting to "ratify" the past ALJ appointments, but the Court did not address the validity of that order.

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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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