

## Free Enterprise Fund et al., v. Public Company Accounting Oversight Board Brief for The CATO Institute & Professors Larry Ribstein and Henry Butler as Amici Curiae in Support of Petitioners

Contributor: [Cato Institute](#)

**SUMMARY:** Passed with scant deliberation amid a stock market panic, the Sarbanes-Oxley Act of 2002 vastly expanded the federal government's role in regulating corporate governance and the accounting industry. As part of that effort, Congress created a new agency to "audit the auditors." Known as the Public Company Accounting Oversight Board, the agency has broad rulemaking and enforcement powers to set accounting standards, investigate accounting firms, punish criminal violations, and make whatever rules "may be necessary or appropriate in the public interest or for the protection of investors." Remarkably, the PCAOB (pronounced "peek-a-boo") also has the power to fund its own budget by levying taxes on publicly traded companies. Despite giving the PCAOB all this power, however, Congress insulated it entirely from presidential oversight. Unlike with an ordinary "independent agency," the president has no power whatsoever to appoint or remove PCAOB officials. Those officials may be removed only "for cause" by the SEC, not the president; and SEC officials may themselves be removed only for cause. The Free Enterprise Fund challenged the constitutionality of the PCAOB and appealed to the Supreme Court. Cato's supporting brief focuses on the PCAOB's practical policy consequences, illustrating how the PCAOB's unconstitutional structure has created incentives for out-of-control spending, agency aggrandizement, and lack of coordination between regulators. Our brief also highlights the PCAOB's efforts to impose American accounting standards abroad, which has caused confusion and invited retaliation from foreign regulators.

Please see full amici brief for more information.

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No. 08-861

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**In the Supreme Court of the United States**

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FREE ENTERPRISE FUND ET AL., PETITIONERS  
 v.  
 PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD,  
 RESPONDENT

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ON WRIT OF CERTIORARI  
 TO THE UNITED STATES COURT OF APPEALS  
 FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**BRIEF FOR THE CATO INSTITUTE AND  
 PROFESSORS LARRY RIBSTEIN AND  
 HENRY BUTLER AS AMICI CURIAE  
 IN SUPPORT OF PETITIONERS**

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**Case Number:** 08-861

**Jurisdiction:** Federal, U.S. Supreme Court

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