



Supreme Court Hard to Predict in Important Securities Case

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Investment adviser Ray Lucia conducted some seminars that ran afoul of the Securities and Exchange Commission. The SEC fined him \$300,000 and, more importantly, barred him from working in the field after an SEC administrator determined that he had misled prospective clients in a quasi-judicial proceeding that the SEC investigated, prosecuted, and adjudicated without any appreciable oversight. He made a federal case out of the rather apparent separation-of-powers violation, which culminated in today's Supreme Court argument in *Lucia v. SEC*. (For more background, [see here](#).)

The central issue in the case is whether the SEC's administrative law judges (ALJs) are "officers of the United States" such that they have to be appointed by and ultimately accountable to the president. That question in turn turns on how much discretion they have and whether their rulings change parties' legal rights—or, given certain precedent, how you would write a rule that distinguishes officers from mere employees.

After argument, *Lucia* remains hard to predict. A couple of justices (Stephen Breyer, Sonia Sotomayor) seemed dubious that the operations of a significant part of the government could be jeopardized based on what seemed to them to be legalistic technicalities. A couple of others (John Roberts, Neil Gorsuch) seemed to recognize the constitutional problem with the way administrative law judges are appointed but wonder how to write the opinion and apply the proper remedy. The rest seemed genuinely puzzled as to what to do with this case, and weren't fully satisfied with any of the arguments presented.

None of the justices seemed particularly interested in the "removal power" aspect of the case, which the United States raised in its brief and Cato also covered [in our brief](#). But all were troubled by the potential ramifications of ruling one way or another, because so many federal decisions could potentially be affected.

However this ends up, the case shows two things: (1) the importance of appointing judges and justices who take constitutional structure seriously, because that's the ultimate guarantor of liberty, and (2) the incredible and unaccountable sprawl of the administrative state.

A decision is expected by the end of June.

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