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Supreme Court to Hear Challenge to Accounting Board

By FAWN JOHNSON

WASHINGTON -- The Supreme Court will hear arguments Monday in a case challenging the constitutionality of the 2002 Sarbanes-Oxley accounting law because of how the statute handles appointments to the independent Public Company Accounting Oversight Board.

Free-enterprise groups and a Nevada accounting firm sued to stop the Securities and Exchange Commission from naming members of the accounting board, set up by Congress to oversee public company accountants.

The Free Enterprise Fund and accounting firm Beckstead and Watts argue the accounting board undermines the president's constitutionally guaranteed authority and independence because the board's members are selected by the SEC, which is independent from the White House.

The SEC can't remove board members for anything other than willful violations, thus insulating them from the SEC's influence and by extension the White House, according to the petitioners.

Moreover, the president hasn't any power to review the board's work or influence its finances, the petitioners argue.

"Congress has thoroughly plugged each and every potential avenue by which the president could hope to even indirectly control or influence the board," the petitioners wrote in their brief to the court.

According to the petitioners, the arrangement also violates the constitutional guarantee of a separation of powers because Congress has at least as much control over the accounting board, if not more, as the White House. The SEC and the public accounting board both are subject to congressional oversight.

The accounting board and the U.S. government disagree.

In separate briefs to the court, both the board and the U.S. Solicitor General Elena Kagan said the Constitution permits the appointment of "inferior officers" to be delegated to other government agencies. Accounting board members meet that standard because they are directly accountable to the SEC.

It is permissible for Congress to give the SEC, rather than the president, the authority to remove accounting board members. "That traditional arrangement does not undermine the president's executive power; it merely requires him to supervise inferior officers in customary 'chain of command' fashion," the accounting board's brief said.

The solicitor's brief said the Senate's ability to weigh in on appointments to administration boards isn't any different than "a host of scenarios in which Congress could frustrate the president's appointments or proposals. ... That power of the Senate is simply an example of the permissible checks and balances" imbedded in the Constitution.

A U.S. federal judge dismissed the lawsuit in 2007 and the Washington-based U.S. Federal Circuit Court of Appeals also rejected the challenge in a 2-1 decision last year.

The private, nonprofit board is charged with inspecting and disciplining public company accountants.

Several prominent conservatives and free-market groups such as the CATO Institute have filed briefs in support of the petitioners.

A wide range of investment advocates, retirement groups, and public pension funds support the government's position, including the Council of Institutional Investors, the AFL-CIO, and the California Public Employees Retirement System, or CalPERS.

The case is the Free Enterprise Fund vs. the Public Company Accounting Oversight Board, 08-861.