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WLF Urges Supreme Court To Confirm That Executive Agencies May Not Exercise Judicial Power

(*SEC v. Cochran*)

“Thunder Basin was wrong when it was decided and is still wrong today.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to overturn its misguided precedent and ensure that federal courts exercise jurisdiction over constitutional challenges to agencies’ structures.

The case arises from the SEC’s enforcement action against Michelle Cochran for allegedly violating the Public Company Accounting Oversight Board’s auditing standards. She sued in federal court, arguing that the SEC’s structure is unconstitutional. The District Court held that it lacked subject-matter jurisdiction over Cochran’s claims because Congress intended for the SEC to decide those issues. After *en banc* review, the Fifth Circuit split from ten other courts of appeals and held that the District Court had jurisdiction.

In its amicus brief supporting Cochran, WLF argues that the Supreme Court should overturn its *Thunder Basin* decision. There, the Court announced three factors that courts must consider when analyzing whether Congress implicitly stripped district courts of jurisdiction to hear pre-enforcement challenges. But the decision has allowed federal courts to continue to punt the constitutionality of federal agencies to those very same agencies. As WLF’s brief shows, the *Thunder Basin* factors have been unworkable, both individually and collectively.

WLF’s brief also highlights why *Thunder Basin* was poorly reasoned. The Court tried to ignore the elephant in the room—the due-process problems that arise when federal courts do not hear pre-enforcement challenges. The brief then discusses how *Thunder Basin* is inconsistent with the Supreme Court’s more recent decisions and legal developments. Finally, WLF’s brief details why there are no reliance interests in keeping *Thunder Basin*. Thus, all the stare decisis factors support overruling *Thunder Basin*.

Celebrating its 45th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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