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WLF Urges Supreme Court To End Multiple Levels Of For-Cause Removal For Administrative Law Judges (*SEC v. Jarkesy*)

“Multiple levels of for-cause removal protection for ALJs deprive the President of the ability to ensure that officers are properly carrying out their duties.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to affirm a decision vacating a Securities and Exchange Commission order. WLF argues that the SEC’s administrative law judges enjoy unconstitutional for-cause removal protection.

The case arises from a lengthy administrative proceeding. After significant litigation, an ALJ recommended that the SEC sanction George Jarkesy and one of his businesses for violating the federal securities laws. The SEC adopted the recommended decision and imposed severe financial penalties on Respondents. On petition for review, the Fifth Circuit vacated the order because (1) the administrative proceeding violated the Seventh Amendment; (2) the SEC’s ability to choose whether to proceed in district court or bring in-house proceedings violates the nondelegation doctrine; and (3) SEC ALJs enjoy multiple layers of for-cause removal protection. The Supreme Court agreed to consider all three questions.

In its amicus brief supporting Respondents, WLF urges the Supreme Court to address only whether SEC ALJs enjoy unconstitutional removal protection. As the brief explains, SEC ALJs are inferior officers who enjoy multiple levels of for-cause removal protection. The Supreme Court’s decision in *Free Enterprise Fund* makes clear that this violates Article II because the President lacks the ability to ensure that SEC ALJs are fulfilling their duties.

WLF’s brief also explains why the removal protections are not severable. Congress decided that it did not want ALJs to serve as agency pawns. So it changed the way that they were supervised and provided them with for-cause removal protection. There is no indication that Congress would want the current adjudicatory system without that removal protection for ALJs. Similarly, severing the for-cause removal protection for Merit System Protection Board members would be an overbroad remedy because supervision of ALJs is only a small part of the MSPB’s job.

Celebrating its 46th 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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