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## In Victory for WLF, Supreme Court Holds SEC's Administrative Process Unconstitutional

(*SEC v. Jarkesy*)

**“The government cannot escape the Seventh Amendment’s requirement by using in-house proceedings.”**

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—The U.S. Supreme Court today affirmed a Fifth Circuit decision that held the Securities and Exchange Commission’s in-house proceedings are unconstitutional. This was welcome news for WLF, which filed an amicus brief supporting Respondents. The Fifth Circuit had held that (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. Today the Supreme Court affirmed on the basis of the Seventh Amendment violation. This victory severely cabins the powers of unelected bureaucrats in federal agencies.

WLF’s amicus brief focused on a different issue. It argued that 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 explained 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.

*Celebrating its 47th 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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