

No. 21-1239

In the
Supreme Court of the United States

SECURITIES AND EXCHANGE COMMISSION, ET AL.,

Petitioners,

v.

MICHELLE COCHRAN,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MARCH 11, 2022
CERTIORARI GRANTED MAY 16, 2022

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In accordance with Supreme Court Rule 26.1, the following items have been omitted in printing this joint appendix because they appear on the following pages of the appendix to the Petition for a Writ of Certiorari (March 11, 2022):

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RELEVANT DOCKET ENTRIES

**United States Court of Appeals
for the Fifth Circuit
Case No. 19-10396**

Date	Docket Text
04/09/2019	CIVIL RIGHTS CASE docketed. NOA filed by Appellant Ms. Michelle Cochran [19-10396] (LLL) Entered: 04/09/2019 02:37 PM] * * *
04/23/2019	ELECTRONIC RECORD ON APPEAL REQUESTED FROM DISTRICT COURT for 4:19-CV-66. Electronic ROA due 05/08/2019. [19-10396] (MFY) [Entered: 04/23/2019 10:50 AM] * * *
04/29/2019	ELECTRONIC RECORD ON APPEAL FILED. Exhibits on File in District Court? No. Electronic ROA deadline satisfied. [19-10396] (CB) [Entered: 04/29/2019 08:08 AM]
04/29/2019	BRIEFING NOTICE ISSUED A/Pet's Brief due on 06/10/2019 for Appellant Michelle Cochran. [19-10396] (CB) [Entered: 04/29/2019 08:09 AM] * * *
06/10/2019	APPELLANT'S BRIEF FILED # of Copies Provided: 0

Date	Docket Text
	<p>A/Pet's Brief deadline satisfied. Appellee's Brief due on 07/10/2019 for Appellees William P. Barr, U. S. Attorney General, Jay Clayton and Securities and Exchange Commission. Paper Copies of Brief due on 06/17/2019 for Appellant Michelle Cochran. [19-10396]</p>
	<p>REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S BRIEF FILED by Ms. Michelle Cochran. Date of service: 06/10/2019 via email - Attorney for Appellants: Cook, Simpson; Attorney for Appellees: Cutri-Kohart, Salzman, Stoltz [19-10396] (Steven M. Simpson) [Entered: 06/10/2019 10:30 PM]</p>
06/10/2019	<p>RECORD EXCERPTS FILED # of Copies Provided: 0 Paper Copies of Record of Excerpts due on 06/17/2019 for Appellant Michelle Cochran. [19-10396]</p>
	<p>REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RECORD EXCERPTS FILED by Appellant Ms. Michelle Cochran. Date of service: 06/10/2019 via email - Attorney for Appellants: Cook, Simpson; Attorney for Appellees: Cutri-Kohart, Salzman, Stoltz [19-10396]</p>

Date	Docket Text
	(Steven M. Simpson) [Entered: 06/10/2019 10:32 PM] * * *
06/12/2019	UNOPPOSED MOTION Filed by Mr. William P. Barr, U. S. Attorney General, Mr. Jay Clayton and SEC to extend time to file brief of appellee until 08/09/2019 [9073644-2]. Date of service: 06/12/2019 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little, Simpson [19-10396] (Joshua Marc Salzman) [Entered: 06/12/2019 08:49 AM]
06/12/2019	CLERK ORDER granting Motion to extend time to file appellee's brief by Appellees SEC, Mr. William P. Barr, U. S. Attorney General, Jay Clayton and Securities and Exchange Commission [19-10396] (RLL) [Entered: 06/12/2019 11:24 AM] * * *
06/17/2019	AMICUS CURIAE BRIEF FILED by Mr. Nelson Obus, Mr. Mark Cuban and Mr. Phillip Goldstein. The Consent is included in the Brief. Brief NOT Sufficient as it requires an Appearance Form from counsel signing the brief. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON

Date	Docket Text
	<p>HOW TO REMEDY THE DEFAULT. # of Copies Provided: 0</p> <p>Sufficient Brief due on 07/02/2019 for Amici Curiae Phillip Goldstein, Mark Cuban and Nelson Obus.. Paper Copies of Brief due on 06/24/2019 for Amici Curiae Phillip Goldstein, Mark Cuban and Nelson Obus. [19-10396]</p> <p>REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: AMICUS CURIAE BRIEF FILED by Phillip Goldstein, Mark Cuban and Nelson Obus. Date of Service: 06/17/2019 via email - Attorney for Appellees: Aguilar, Cutri-Kohart, Salzman, Stoltz; Attorney for Appellants: Cook, Little, Simpson [19-10396] (Samuel Wollin Cooper) [Entered: 06/17/2019 03:58 PM]</p> <p>* * *</p>
06/17/2019	<p>SUFFICIENT AMICUS CURIAE BRIEF FILED by Texas Public Policy Foundation. The Consent is included in the Brief.</p> <p># of Copies Provided: 0</p> <p>Sufficient Brief deadline satisfied. Paper Copies of Brief due on 06/24/2019 for Amicus Curiae Texas Public Policy Foundation. [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows:</p>

Date	Docket Text
	<p>AMICUS CURIAE BRIEF FILED by Texas Public Policy Foundation. The Consent is Included in the Brief. Additionally the Brief requires INSUFFICIENT FOR: CAPTION DOES NOT MATCH TITLE OF CASE; CERTIFICATE OF COMPLIANCE IS OUT OF ORDER; APPEARANCE FORM - PENDING. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. # of Copies Provided: 0 Sufficient Brief due on 07/02/2019 for Amicus Curiae Texas Public Policy Foundation. [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: AMICUS CURIAE BRIEF FILED by Texas Public Policy Foundation. Date of service: 06/17/2019 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little, Simpson; US mail Attorney for Appellee Cutri-Kohart [19-10396] (Allyson Newton Ho) [Entered: 06/17/2019 04:06 PM</p>
06/17/2019	<p>SUFFICIENT AMICUS CURIAE BRIEF FILED by Competitive Enterprise Institute, Cause Of Action Institute and Cato Institute. The Consent is included in the Brief. # of Copies Provided: 0 Paper Copies of</p>

Date	Docket Text
	Brief due on 06/24/2019 for Amici Curiae Cato Institute, Cause Of Action Institute; and Competitive Enterprise Institute. [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: AMICUS CURIAE BRIEF FILED by The Cato Institute; Cause of Action Institute; and The Competitive Enterprise Institute. Date of service: 06/17/2019 via email - Attorney for Appellees: Aguilar, Cutri-Kohart, Salzman, Stoltz; Attorney for Appellants: Cook, Little, Simpson [19-10396] (Ashley Charles Parrish) [Entered: 06/17/2019 05:19 PM]
	* * *
06/18/2019	PROPOSED SUFFICIENT BRIEF filed by Amicus Texas Public Policy Foundation [9077552-2] Date of service: 06/18/2019 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little, Simpson; Attorney for Amici Curiae: Cooper, Ehrett, Ho, Kiernan, Parrish; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Allyson Newton Ho) [Entered: 06/18/2019 02:41 PM]
	* * *
08/09/2019	SUFFICIENT APPELLEE'S BRIEF FILED # of Copies Provided: 0 Sufficient Brief deadline satisfied.

Date

Docket Text

Paper Copies of Brief due on 08/19/2019 for Appellees William P. Barr, U. S. Attorney General, Jay Clayton and Securities and Exchange Commission. [19-10396]

REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLEE'S BRIEF FILED Additionally the Brief requires INSUFFICIENT FOR: CERTIFICATE OF COMPLIANCE IS OUT OF ORDER. Instructions to Attorney: PLEASE READ THE ATTACHED NOTICE FOR INSTRUCTIONS ON HOW TO REMEDY THE DEFAULT. # of Copies Provided: 0 E/Res's Brief deadline satisfied. Reply Brief due on 08/30/2019 for Appellant Michelle Cochran. Sufficient Brief due on 08/26/2019 for Appellees William P. Barr, U. S. Attorney General, Jay Clayton and Securities and Exchange Commission. [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows:

APPELLEE'S BRIEF FILED by SEC, Mr. Jay Clayton and Mr. William P. Barr, U. S. Attorney General. Date of service: 08/09/2019 via email - Attorney for Appellees: Aguilar, Cutri-Kohart, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ehrett,

Date	Docket Text
	Ferguson, Ho, Johnson, Parrish [19-10396] (Daniel J. Aguilar) [Entered: 08/09/2019 03:22 PM]
08/12/2019	PROPOSED SUFFICIENT BRIEF filed by Appellees SEC, Mr. Jay Clayton and Mr. William P. Barr, U. S. Attorney General [9118289-2] Date of service: 08/12/2019 via email - Attorney for Appellees: Aguilar, Cutri-Kohart, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ehrett, Ferguson, Ho, Johnson, Parrish [19-10396] (Daniel J. Aguilar) [Entered: 08/12/2019 02:01 PM]
	* * *
08/16/2019	OPPOSED MOTION filed by Appellant Ms. Michelle Cochran for injunction pending appeal [9123524-2]. Date of service: 08/16/2019 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ehrett, Ferguson, Ho, Johnson, Parrish; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Margaret A. Little) [Entered: 08/16/2019 03:46 PM]
08/20/2019	RESPONSE DUE to Motion for injunction pending appeal filed by Appellant Ms. Michelle Cochran in 19-10396 [9123524-2]Response/Opposition

Date	Docket Text
	due on 08/26/2019 [19-10396] (MFY) [Entered: 08/20/2019 08:34 AM]
08/26/2019	RESPONSE/OPPOSITION filed by Mr. William P. Barr, U. S. Attorney General, Mr. Jay Clayton and SEC [9130189-1] to the Motion filed by Appellant Ms. Michelle Cochran [9123524-2] Date of Service: 08/26/2019 via email - Attorney for Appellees: Aguilar, Cutri-Kohart, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ehrett, Ferguson, Ho, Johnson, Parrish; US mail - Attorney for Appellee: Cutri-Kohart. [19-10396] (Daniel J. Aguilar) [Entered: 08/26/2019 03:42 PM]
08/30/2019	APPELLANT'S REPLY BRIEF FILED # of Copies Provided: 0 Reply Brief deadline satisfied. Paper Copies of Brief due on 09/09/2019 for Appellant Michelle Cochran. [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S REPLY BRIEF FILED by Ms. Michelle Cochran. Date of service: 08/30/2019 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ehrett,

Date	Docket Text
	Ferguson, Ho, Johnson, Parrish; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Margaret A. Little) [Entered: 08/30/2019 05:39 PM] * * *
09/13/2019	CASE CALENDARED for oral argument on the Motion for an Injunction Pending Appeal on Tuesday, 09/24/2019, at 4:00 P.M. in the East Courtroom, Room 223, of the John Minor Wisdom United States Court of Appeals Building, 600 Camp Street, New Orleans, LA [19-10396] (GAM) [Entered: 09/13/2019 12:28 PM]
09/24/2019	ORAL ARGUMENT ON THE MOTION FOR AN INJUNCTION PENDING APPEAL HEARD before Judges Jones, Higginson, Oldham. Arguing Person Information Updated for: Daniel J. Aguilar arguing for Appellee U. S. Attorney General Barr, William P., Appellee Jay Clayton AND Appellee Securities and Exchange Commission; Arguing Person Information Updated for: Margaret A. Little arguing for Appellant Michelle Cochran [19-10396] (KMP) [Entered: 09/24/2019 04:52 PM]
09/24/2019	COURT ORDER GRANTING Appellant's Motion for an injunction pending appeal under Federal Rule of

Date	Docket Text
	Appellate Procedure 8. (CAG) [Entered: 09/24/2019 06:21 PM]
09/26/2019	COURT ORDER expediting the appeal (IN DETAIL) [9153938-2] [19-10396] (PAC) [Entered: 09/26/2019 02:09 PM]
09/27/2019	CASE CALENDARED for oral argument on Tuesday, 11/05/2019 in New Orleans in the West Courtroom -- AM session. In accordance with our policy, lead counsel only will receive via email at a later date a copy of the court's docket and an acknowledgment form. All other counsel of record should monitor the court's website for the posting of the oral argument calendars.. [19-10396] (PFT) [Entered: 09/27/2019 11:16 AM]
11/05/2019	ORAL ARGUMENT HEARD before Judges Owen, Haynes, Costa. Arguing Person Information Updated for: Daniel J. Aguilar arguing for Appellees Securities and Exchange Commission, Et Al; Arguing Person Information Updated for: Margaret A. Little arguing for Appellant Michelle Cochran [19-10396] (PFT) [Entered: 11/05/2019 11:59 AM]
01/15/2020	SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED Date of Service: 01/15/2020 [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows:

Date	Docket Text
	SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellees SEC, Mr. Jay Clayton and Mr. William P. Barr, U. S. Attorney General Date of Service: 01/15/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ehrett, Ferguson, Ho, Johnson, Parrish; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Daniel J. Aguilar) [Entered: 01/15/2020 10:21 AM]
01/29/2020	SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellant Ms. Michelle Cochran Date of Service: 01/29/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ehrett, Ferguson, Ho, Johnson, Parrish; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Margaret A. Little) [Entered: 01/29/2020 06:11 PM]
	* * *
07/10/2020	SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellant Ms. Michelle Cochran Date of Service: 07/10/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ferguson, Ho, Johnson, Parrish; US

Date	Docket Text
	mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Margaret A. Little) [Entered: 07/10/2020 11:28 AM]
07/13/2020	RESPONSE filed by Appellees SEC, Mr. Jay Clayton and Mr. William P. Barr, U. S. Attorney General to the 28j Letter filed by Appellant Ms. Michelle Cochran [9352702-2] Date of Service: 07/13/2020 via email - Attorney for Appellees: Aguilar, Cutri-Kohart, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ferguson, Ho, Johnson, Parrish [19-10396] (Daniel J. Aguilar) [Entered: 07/13/2020 09:35 AM]
08/11/2020	PUBLISHED OPINION FILED. [19-10396 Affirmed] Judge: PRO, Judge: CH, Judge: GJC. Mandate issue date is 10/05/2020 [19-10396] (KGL) [Entered: 08/11/2020 01:54 PM]
08/11/2020	JUDGMENT ENTERED AND FILED. Costs Taxed Against: Appellant. [19-10396] (KGL) [Entered: 08/11/2020 01:57 PM]
08/12/2020	TECHNICAL REVISION MADE TO OPINION. [9375084-2] [19-10396] (NFD) [Entered: 08/12/2020 01:49 PM]
09/24/2020	PETITION for rehearing en banc [9407336-2] Number of Copies:0. Sufficient Rehearing due on 10/05/2020

Date	Docket Text
	for Appellant Michelle Cochran. Document is insufficient for the following reasons: A copy of the opinion must be attached [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: PETITION filed by Appellant Ms. Michelle Cochran for rehearing en banc [9407336-2]. Date of Service: 09/24/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ferguson, Ho, Johnson, Parrish; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Margaret A. Little) [Entered: 09/24/2020 01:56 PM] * * *
09/29/2020	REHEARING MADE SUFFICIENT filed by Appellant Ms. Michelle Cochran in 19-10396 [9407336-2]. Sufficient Rehearing due deadline satisfied [19-10396] (CAS) [Entered: 09/29/2020 08:36 AM]
09/29/2020	COURT DIRECTIVE ISSUED requesting a response to the Petition for rehearing en banc filed by Appellant Ms. Michelle Cochran in 19-10396 [9407336-2] Response/Opposition due on 10/09/2020. [19-10396] (CAS) [Entered: 09/29/2020 10:13 AM]

Date	Docket Text
	* * *
10/01/2020	UNOPPOSED MOTION filed by Appellees SEC, Mr. Jay Clayton and Mr. William P. Barr, U.S. Attorney General to extend the time to file a response to the Petition for rehearing en banc [9407336-2] filed by Appellant Ms. Michelle Cochran until 10/16/2020 [9412330-2]. Date of service: 10/01/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ferguson, Ho, Johnson, Parrish; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Daniel J. Aguilar) [Entered: 10/01/2020 03:18 PM]
10/01/2020	UNOPPOSED MOTION by Texas Public Policy Foundation to file amicus brief [9412474-2] Date of service: 10/01/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ferguson, Ho, Johnson, Parrish; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Allyson Newton Ho) [Entered: 10/01/2020 04:56 PM]
	* * *
10/01/2020	UNOPPOSED MOTION by The Cato Institute and the Competitive Enterprise Institute to file amicus brief

Date	Docket Text
	[9412519-2] Date of service: 10/01/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Appellants: Cook, Little; Attorney for Amici Curiae: Cooper, Ferguson, Ho, Johnson, Parrish; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Ashley Charles Parrish) [Entered: 10/01/2020 08:24 PM]
10/02/2020	COURT ORDER: IT IS ORDERED that Appellees' unopposed motion for an extension of seven days, or, to and including October 16, 2020 to file its response to the petition for rehearing en banc is GRANTED. [9412330-2] [19-10396] (CAS) [Entered: 10/02/2020 10:09 AM]
10/05/2020	COURT ORDER: IT IS ORDERED that the unopposed motion of Texas Public Policy Foundation, for leave to file brief as amicus curiae, is GRANTED. [9412474-2] [19-10396] (CAS) [Entered: 10/05/2020 10:38 AM]
10/05/2020	AMICUS CURIAE BRIEF FILED by Texas Public Policy Foundation. Consent is Not Necessary as a Motion has been Granted. # of Copies Provided: 0 [19-10396] (CAS) [Entered: 10/05/2020 10:46 AM]
10/05/2020	COURT ORDER: IT IS ORDERED that the unopposed motion of Cato Institute

Date	Docket Text
	and Competative Enterprise Institute, for leave to file brief as amicus curiae, is GRANTED. [9412519-2] [19-10396] (CAS) [Entered: 10/05/2020 10:57 AM]
10/05/2020	AMICUS CURIAE BRIEF FILED by Cato Institute and Competitive Enterprise Institute. Consent is Not Necessary as a Motion has been Granted. # of Copies Provided: 0 [19-10396] (CAS) [Entered: 10/05/2020 11:08 AM] * * *
10/15/2020	RESPONSE DUE to Court Order Court directive requesting a response [9409885-2]Response/Opposition deadline updated to 10/16/2020 [19-10396] (CAS) [Entered: 10/15/2020 11:36 AM]
10/16/2020	RESPONSE/OPPOSITION [9422519-1] to the Petition for rehearing en banc filed by Appellant Ms. Michelle Cochran in 19-10396 [9407336-2] [9409885-2]Response/Opposition deadline satisfied. Date of Service: 10/16/2020. [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RESPONSE/OPPOSITION filed by SEC, Mr. Jay Clayton and Mr. William P. Barr, U.S. Attorney General

Date	Docket Text
	<p>[9422519-1] to the Petition filed by Appellant Ms. Michelle Cochran [9407336-2] Date of Service: 10/16/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Amici Curiae: Clegg, Cooper, Ferguson, Ho, Hubbard, Johnson, Parrish, Spencer; Attorney for Appellants: Cook, Little; US mail - Attorney for Appellee: Cutri-Kohart. [19-10396] (Daniel J. Aguilar) [Entered: 10/16/2020 09:24 AM]</p> <p>* * *</p>
10/30/2020	<p>COURT ORDER granting Petition for rehearing en banc filed by Appellant Ms. Michelle Cochran [9407336-2] A/Pet Supplemental Brief due on 11/30/2020 for Appellant Michelle Cochran.. E/Res Supplemental Brief due on 12/30/2020 for Appellees William P. Barr, U.S. Attorney General, Jay Clayton and Securities and Exchange Commission.. Miscellaneous due on 11/10/2020 for Appellees William P. Barr, U.S. Attorney General, Jay Clayton and Securities and Exchange Commission and Appellant Michelle Cochran to send in 22 copies of the previously filed briefs and record excerpts; reopening case [9432358-2] [19-10396] (GAM) [Entered: 10/30/2020 09:34 AM]</p>

Date	Docket Text
10/30/2020	CASE TENTATIVELY calendared for EN BANC oral argument for the week of 01/18/2021. [19-10396] (GAM) [Entered: 10/30/2020 04:00 PM] * * *
11/19/2020	UNOPPOSED MOTION by Phillip Goldstein, Mark Cuban, and Nelson Obus to file amicus brief [9446532-2] Date of service: 11/19/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Amici Curiae: Clegg, Cooper, Ho, Hubbard, Johnson, Parrish, Spencer; Attorney for Appellants: Cook, Little; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Samuel Wollin Cooper) [Entered: 11/19/2020 12:41 PM]
11/20/2020	COURT ORDER granting Motion to file amicus brief [9446532-2] filed by Phillip Goldstein, Mark Cuban and Nelson Obus in 19-10396 [19-10396] (LLL) [Entered: 11/20/2020 01:00 PM] * * *
11/30/2020	APPELLANT'S SUPPLEMENTAL BRIEF FILED. # of Copies Provided: 0 A/Pet's Supplemental Brief deadline satisfied. 22 Paper Copies of Brief due on 12/07/2020 for Appellant Michelle Cochran. [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared

Date	Docket Text
	as follows: APPELLANT'S SUPPLEMENTAL BRIEF FILED by Ms. Michelle Cochran. Date of service: 11/30/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Amici Curiae: Clegg, Cooper, Ho, Hubbard, Johnson, Parrish, Spencer; Attorney for Appellants: Cook, Little; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Margaret A. Little) [Entered: 11/30/2020 05:01 PM]
12/01/2020	AMICUS CURIAE BRIEF FILED by Mr. Mark Cuban, Mr. Phillip Goldstein and Mr. Nelson Obus. Consent is Not Necessary as a Motion has been Granted. # of Copies Provided: 0 [19-10396] (LLL) [Entered: 12/01/2020 08:49 AM] * * *
12/07/2020	UNOPPOSED MOTION by Not Party Americans for Prosperity Foundation to file amicus brief [9457078-2] to file brief in excess of the word count limitation but not to exceed 6254 words [9457078-3] [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED MOTION by Americans for Prosperity Foundation to file amicus brief [9457078-2] Date of service: 12/07/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz;

Date	Docket Text
	Attorney for Amici Curiae: Clegg, Cooper, Ho, Hubbard, Johnson, Parrish, Spencer; Attorney for Appellants: Cook, Little; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Michael David Pepson) [Entered: 12/07/2020 11:08 AM]
12/07/2020	UNOPPOSED MOTION by The Cato Institute and the Competitive Enterprise Institute to file amicus brief [9457496-2] Date of service: 12/07/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Amici Curiae: Clegg, Cooper, Ho, Hubbard, Johnson, Parrish, Spencer; Attorney for Appellants: Cook, Little; Attorney for Not Party: Pepson; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Ashley Charles Parrish) [Entered: 12/07/2020 02:31 PM]
12/07/2020	CASE CALENDARED for En Banc rehearing on Wednesday, 01/20/2021 via Video Conferencing. In accordance with our policy, lead counsel only will receive via email at a later date a copy of the court's docket and an acknowledgment form. All other counsel of record should monitor the court's website for the posting of the oral argument calendars. [19-10396] (PFT) [Entered: 12/07/2020 04:16 PM]

Date	Docket Text
12/07/2020	COURT ORDER granting Motion to file amicus brief filed by Americans for Prosperity Foundation [9457078-2]; granting Motion to file brief in excess of word count filed by Americans for Prosperity Foundation [9457078-3] [19-10396] (LLL) [Entered: 12/07/2020 04:45 PM]
12/07/2020	AMICUS CURIAE BRIEF FILED by Americans for Prosperity Foundation. Consent is Not Necessary as a Motion has been Granted. # of Copies Provided: 0 Paper Copies of Brief due on 12/14/2020 for Amicus Curiae Americans for Prosperity Foundation. [19-10396] (LLL) [Entered: 12/07/2020 04:55 PM]
12/08/2020	COURT ORDER granting Motion to file amicus brief [9457496-2] filed by Cato Institute and Competitive Enterprise Institute in 19-10396 [19-10396] (LLL) [Entered: 12/08/2020 10:29 AM]
12/08/2020	AMICUS CURIAE BRIEF FILED by Cato Institute and Competitive Enterprise Institute. Consent is Not Necessary as a Motion has been Granted. # of Copies Provided: 0 Paper Copies of Brief due on 12/14/2020 for Amici Curiae Cato Institute and Competitive Enterprise Institute. [19-

Date	Docket Text
	10396] (LLL) [Entered: 12/08/2020 10:38 AM] * * *
12/30/2020	LETTER filed by Appellees SEC, Mr. Jay Clayton and Mr. Jeffrey A. Rosen, Acting U.S. Attorney General Notification of the automatic substitution of official capacity defendants under Fed. R. App. P. 43(c)(2). Date of Service: 12/30/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Amici Curiae: Clegg, Cooper, Ho, Hubbard, Johnson, Parrish, Pepson, Spencer; Attorney for Appellants: Cook, Little; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Daniel J. Aguilar) [Entered: 12/30/2020 09:38 AM]
12/30/2020	CASE CAPTION updated. Appellee Jay Clayton in 19-10396 substituted by Appellee Elad L. Roismann in 19-10396 [19-10396] (MVM) [Entered: 12/30/2020 12:17 PM]
12/30/2020	APPELLEE'S SUPPLEMENTAL BRIEF FILED E/Res's Supplemental Brief deadline satisfied. Paper Copies of Brief due on 01/04/2021 for Appellees Elad L. Roismann, Jeffrey A. Rosen, Acting U.S. Attorney General and Securities and Exchange Commission. [19-10396]

Date	Docket Text
	<p>REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLEE'S SUPPLEMENTAL BRIEF FILED by SEC, Mr. Elad L. Roismann and Mr. Jeffrey A. Rosen, Acting U.S. Attorney General Date of service: 12/30/2020 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Amici Curiae: Clegg, Cooper, Ho, Hubbard, Johnson, Parrish, Pepson, Spencer; Attorney for Appellants: Cook, Little; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Daniel J. Aguilar) [Entered: 12/30/2020 12:50 PM]</p> <p>* * *</p>
01/08/2021	<p>LETTER OF ADVISEMENT. Reason: case caption updated [19-10396] (LLL) [Entered: 01/08/2021 12:51 PM]</p>
01/13/2021	<p>LETTER OF ADVISEMENT. Reason: case caption updated with current officials. [19-10396] (LLL) [Entered: 01/13/2021 10:41 AM]</p>
01/13/2021	<p>MOTION filed by Appellant Ms. Michelle Cochran to file reply brief by [9482012-2]. [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED MOTION filed by Appellant Ms. Michelle Cochran to adopt [9482012-2] and INCORPORATED RESPONSE to the</p>

Date	Docket Text
	Court Order to reopen case [9432358-2] Date of service: 01/13/2021 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Amici Curiae: Clegg, Cooper, Ho, Hubbard, Johnson, Parrish, Pepson, Spencer; Attorney for Appellants: Cook, Little; US mail - Attorney for Appellee: Cutri- Kohart [19-10396] (Margaret A. Little) [Entered: 01/13/2021 11:18 PM]
01/14/2021	COURT ORDER granting Motion to file reply brief filed by Appellant Ms. Michelle Cochran [9482012-2] [19- 10396] (LLL) [Entered: 01/14/2021 09:14 AM]
01/14/2021	APPELLANT'S REPLY BRIEF FILED by Ms. Michelle Cochran. # of Copies Provided: 0 22 Paper Copies of Brief due on 01/15/2021 for Appellant Michelle Cochran. [19-10396] (LLL) [Entered: 01/14/2021 09:18 AM] * * *
01/20/2021	EN BANC ORAL ARGUMENT HEARD Owen, Jones, Smith, Stewart, Dennis, Elrod, Southwick, Haynes, Graves, Higginson, Costa, Willett, Duncan, Engelhardt, Oldham, Wilson En Banc; Arguing Person Information Updated for: Daniel J. Aguilar arguing for Appellees Securities and Exchange, Et

Date	Docket Text
	Al; Arguing Person Information Updated for: Margaret A. Little arguing for Appellant Michelle Cochran [19-10396] (PFT) [Entered: 01/20/2021 11:20 AM]
01/25/2021	LETTER OF ADVISEMENT. Reason: case caption updated. Jeffrey A. Rosen has been replaced by Robert M. Wilkinson. [19-10396] (LLL) [Entered: 01/25/2021 08:51 AM]
01/29/2021	SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED [19-10396] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellees SEC, Mr. Elad L. Roismann and Mr. Robert M. Wilkinson, Acting U.S. Attorney General Date of Service: 01/29/2021 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Amici Curiae: Clegg, Cooper, Ho, Hubbard, Johnson, Parrish, Pepson, Spencer; Attorney for Appellants: Cook, Little; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Daniel J. Aguilar) [Entered: 01/29/2021 03:31 PM]
02/03/2021	RESPONSE filed to the 28j Letter filed by Appellees SEC, Mr. Elad L. Roismann and Mr. Robert M. Wilkinson, Acting U.S. Attorney

Date	Docket Text
	<p>General in 19-10396 [9493497-2] [19-10396]</p> <p>REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellant Ms. Michelle Cochran Date of Service: 02/03/2021 via email - Attorney for Appellees: Aguilar, Salzman, Stoltz; Attorney for Amici Curiae: Clegg, Cooper, Ho, Hubbard, Johnson, Parrish, Pepson, Spencer; Attorney for Appellants: Cook, Little; US mail - Attorney for Appellee: Cutri-Kohart [19-10396] (Margaret A. Little) [Entered: 02/03/2021 04:40 PM]</p>
03/16/2021	<p>LETTER OF ADVISEMENT. Reason: case caption updated [19-10396] (LLL) [Entered: 03/16/2021 02:32 PM]</p>
08/17/2021	<p>CASE CAPTION updated. Appellee Elad L. Roismann in 19-10396 substituted by Appellee Gary Gensler in 19-10396 [19-10396] (LLL) [Entered: 08/17/2021 11:26 AM]</p>
12/13/2021	<p>EN BANC PUBLISHED OPINION FILED. [19-10396 Affirmed in Part, Reversed in Part, and Remanded] Mandate issue date is 02/04/2022 [19-10396] (This opinion includes URL material that is archived by the Fifth Circuit Court of Appeals Library, and made available at</p>

Date	Docket Text
	<p>http://www.lb5.uscourts.gov/ArchivedURLS/.) (NFD) [Entered: 12/13/2021 01:10 PM]</p>
12/13/2021	<p>EN BANC JUDGMENT ENTERED AND FILED. Costs Taxed Against: Each Party Bear Its Own Costs on Appeal. [19-10396] (NFD) [Entered: 12/14/2021 02:29 PM]</p>
02/04/2022	<p>MANDATE ISSUED. Mandate issue date satisfied. [19-10396] (LLL) [Entered: 02/04/2022 08:42 AM]</p>
03/15/2022	<p>SUPREME COURT NOTICE that petition for writ of certiorari [9798085-2] was filed by Appellees Mr. Merrick Garland, U.S. Attorney General, Gary Gensler and SEC on 03/11/2022. Supreme Court Number: 21-1239. [19-10396] (SBS) [Entered: 03/15/2022 10:36 AM]</p>
05/17/2022	<p>SUPREME COURT ORDER received granting petition for writ of certiorari filed by Appellees SEC, Mr. Merrick Garland, U.S. Attorney General and Gary Gensler in 19-10396 on 05/16/2022. [9848649-1] [19-10396] (SBS) [Entered: 05/17/2022 09:47 AM]</p>

RELEVANT DOCKET ENTRIES

**U.S. District Court
Northern District of Texas (Fort Worth)
CIVIL DOCKET FOR CASE #: 4:19-cv-00066-A**

Date	#	Docket Text
01/18/2019	1	COMPLAINT against All Defendants filed by Michelle Cochran. (Filing fee \$400; Receipt number 0539-9720376) Clerk to issue summonses for federal and non-federal defendants. In each Notice of Electronic Filing, the judge assignment is indicated, and a link to the Judges Copy Requirements is provided. The court reminds the filer that any required copy of this and future documents must be delivered to the judge, in the manner prescribed, within three business days of filing. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas must seek admission promptly. Forms, instructions, and exemption information may be found at www.txnd.uscourts.gov , or by clicking here: Attorney Information - Bar Membership. If admission requirements are not satisfied within 21 days, the clerk will notify the presiding judge.

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Date	#	Docket Text
		(Attachments: #1 Cover Sheet) (Cook, Karen) (Entered: 01/18/2019) * * *
02/11/2019	12	MOTION for Preliminary Injunction filed by Michelle Cochran (npk) (Entered: 02/11/2019)
02/11/2019	13	Brief/Memorandum in Support filed by Michelle Cochran re 12 MOTION for Preliminary Injunction (npk) (Entered: 02/11/2019)
02/11/2019	14	Appendix in Support filed by Michelle Cochran re 12 MOTION for Injunction (npk) (Entered: 02/11/2019) * * *
03/04/2019	17	RESPONSE filed by Jay Clayton, U.S. Securities and Exchange Commission, Matthew Whitaker re: 12 MOTION for Preliminary Injunction (npk) (Entered: 03/05/2019) * * *
03/12/2019	19	Defendants' Amended RESPONSE to 12 Plaintiff's MOTION for Preliminary Injunction (bcr) (Entered: 03/12/2019)

Date	#	Docket Text
03/18/2019	20	REPLY filed by Michelle Cochran re: 12 MOTION for Preliminary Injunction (npk) (Entered: 03/18/2019)
03/25/2019	21	MEMORANDUM OPINION and ORDER: The court ORDERS that plaintiff's claims against defendants be, and are hereby, dismissed. (Ordered by Senior Judge John McBryde on 3/25/2019) (tln) (Entered: 03/26/2019)
03/25/2019	22	FINAL JUDGMENT: Consistent with the memorandum opinion and order signed this date, the court ORDERS, ADJUDGES, and DECREES that the claims and causes of action of plaintiff, Michelle Cochran, against defendants, U.S. Securities and Exchange Commission, Jay Clayton in his official capacity as SEC Chairman, and William Barr in his official capacity as U.S. Attorney General, be, and are hereby, dismissed. (Ordered by Senior Judge John McBryde on 3/25/2019) (tln) (Entered: 03/26/2019)
04/08/2019	23	NOTICE OF APPEAL as to 21 Memorandum Opinion and Order, 22 Judgment, to the Fifth Circuit by Michelle Cochran. T.O. form to

Date	#	Docket Text
04/22/2019	24	<p>appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. IMPORTANT ACTION REQUIRED: Provide an electronic copy of any exhibit you offered during a hearing or trial that was admitted into evidence to the clerk of the district court within 14 days of the date of this notice. Copies must be transmitted as PDF attachments through ECF by all ECF Users or delivered to the clerk on a CD by all non-ECF Users. See detailed instructions here. (Exception: This requirement does not apply to a pro se prisoner litigant.) Please note that if original exhibits are in your possession, you must maintain them through final disposition of the case. (tle) (Entered: 04/08/2019)</p>
04/23/2019		<p>USCA Case Number 19-10396 in United States Court of Appeals</p>

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Date	#	Docket Text
04/29/2019		<p>Fifth Circuit for 23 Notice of Appeal, filed by Michelle Cochran. (tle) (Entered: 04/23/2019)</p> <p>* * *</p> <p>Record on Appeal for USCA5 19-10396 (related to 23 appeal): Record consisting of: 1 ECF electronic record on appeal (eROA) is certified,.</p> <p>PLEASE NOTE THE FOLLOWING: Licensed attorneys must have filed an appearance in the USCA5 case and be registered for electronic filing in the USCA5 to access the paginated eROA in the USCA5 ECF system. (Take these steps immediately if you have not already done so. Once you have filed the notice of appearance and/or USCA5 ECF registration, it may take up to 3 business days for the circuit to notify the district clerk that we may grant you access to the eROA in the USCA5 ECF system.) To access the paginated record, log in to the USCA5 ECF system, and under the Utilities menu, select Electronic Record on Appeal. Pro se litigants may request a copy of the record by contacting the appeals deputy in advance to</p>

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Date	#	Docket Text
		arrange delivery. (tle) (Entered: 04/29/2019) * * *
09/26/2019	25	ORDER of USCA No. 19-10396 as to 23 Notice of Appeal, filed by Michelle Cochran. IT IS ORDERED that Appellant's motion for an injunction pending appeal under Federal Rule of Appellate Procedure 8 is GRANTED. (tle) (Entered: 09/26/2019) * * *
02/04/2022	38	JUDGMENT/MANDATE of USCA 19-10396 as to 23 Notice of Appeal, filed by Michelle Cochran. IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED IN PART, REVERSED IN PART, and REMANDED to the District Court for further proceedings in accordance with the opinion of this Court. IT IS FURTHER ORDERED that each party bear its own costs on appeal. Case remanded to the district court for further proceedings. Issued as Mandate: 1/4/2022. (Attachments: # 1 USCA5 Cover Letter) (tle) (Entered: 02/04/2022)

Date	#	Docket Text
02/04/2022	39	Opinion of USCA No. 19-10396 in accordance with USCA judgment re 23 Notice of Appeal, filed by Michelle Cochran. We AFFIRM the district courts judgment in part, REVERSE in part, and REMAND for further proceedings consistent with this opinion. (tle) (Entered: 02/04/2022)
02/04/2022		Case reopened per USCA5 Judgment/Opinion Mandate. [19-10396]. (tle) (Entered: 02/04/2022) * * *
02/08/2022	41	ORDER: Pursuant to the mandate of the United States Court of Appeals for the Fifth Circuit, this action has been remanded in part for further proceedings. Inasmuch as it appears that the only matters to be determined by the court are issues of law, this order is setting a deadline for the filing of dispositive motions and providing important directives that will govern procedures applicable throughout the pendency of this action. The court ORDERS that: The deadline for filing dispositive motions is 5/6/2022. (Ordered by Senior Judge John McBryde on 2/8/2022) (twd) (Entered: 02/08/2022)

Date	#	Docket Text
* * *		
04/04/2022	43	Agreed MOTION to Stay <i>Pending Ruling on Cert. Petition</i> filed by Michelle Cochran (Attachments: # 1 Proposed Order) (Little, Margaret) (Entered: 04/04/2022)
04/05/2022	44	ORDER granting 43 Motion to Stay. This action be, and is hereby, stayed pending ruling by the United States Supreme Court on the petition for writ of certiorari filed by defendants. The court further ORDERS that within fourteen days of the ruling on the petition, the parties each file a report giving their respective positions on whether the stay should be continued. (Ordered by Senior Judge John McBryde on 4/5/2022) (npk) (Entered: 04/05/2022)
04/05/2022	45	NOTICE of <i>SEC Statement Relating to Certain Administrative Adjudications</i> filed by Jay Clayton, US Securities and Exchange Commission, Matthew Whitaker (Attachments: # 1 Exhibit(s)) (Patil, Chetan) (Entered: 04/05/2022)
05/17/2022	46	Received letter from United States Court of Appeals Fifth Circuit No. 19-10396. Enclosed is a copy of the

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Date	#	Docket Text
		Supreme Court order granting certiorari. The petition for a writ of certiorari is granted. [No. 21-1289] (tle) (Entered: 05/17/2022)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MICHELLE COCHRAN,

Plaintiff,

v.

U.S. SECURITIES AND
EXCHANGE
COMMISSION, JAY
CLAYTON, in his official
capacity as Chairman of
the U.S. Securities and
Exchange Commission, and
MATTHEW G.

WHITAKER, in his official
capacity as Acting United
States Attorney General,

Defendants.

CIVIL ACTION NO:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff, Michelle Cochran, brings this complaint for declaratory and injunctive relief, alleging as follows:

PRELIMINARY STATEMENT

1. This action arises from the SEC's attempt to subject plaintiff Michelle Cochran to an administrative proceeding that violates Article II of

the United States Constitution and the due process clause of the Fifth Amendment.

2. On June 21, 2018, the U.S. Supreme Court held in *Lucia v. SEC*, 138 S. Ct. 2044 (2018), that the SEC had been appointing its administrative law judges in violation of the Appointments Clause of Article II. The Supreme Court not only nullified the proceeding against the petitioner, Raymond Lucia, it ordered the SEC to reassign his matter to a new, properly appointed ALJ. In an effort to cure the constitutional defect, the SEC attempted to “ratify” the appointment of all of its ALJs on August 22, 2018 and followed with an order reassigning all pending enforcement proceedings to new ALJs.

3. Michelle Cochran was the subject of one such enforcement proceeding. An accountant, Ms. Cochran was named as a respondent in an administrative proceeding the SEC brought in April 2016 against her former employer, The Hall Group CPAs, and its founder, David Hall. Among other things, the SEC alleged that the firm violated various accounting standards in several audits it performed. While Hall was named as the primary violator, Ms. Cochran’s alleged liability was premised on her participation in some of the allegedly deficient audits as Hall’s employee.

4. On October 24, 2016, the day of the hearing in the administrative proceeding, Hall and his firm settled with the SEC. He agreed to a \$25,000 fine and a permanent ban from practicing as an accountant before the SEC. Hall then testified for the SEC. Ms. Cochran defended herself pro se in the hearing. The ALJ ultimately sided with the SEC, fining Ms. Cochran \$22,500 and banning her from practicing

before the SEC as an accountant for at least five years.

5. The SEC is now attempting to retry Ms. Cochran in a reinstated enforcement proceeding based on the same Order Instituting Proceedings it filed against her in 2016. Although the SEC appointed a new ALJ in her matter after *Lucia*, the SEC is still violating the Constitution in at least two ways.

6. The first was discussed by Justice Breyer in his concurrence in *Lucia*. In violation of the President's removal power, SEC ALJs may only be removed for good cause as determined by the Merit Systems Protection Board (MSPB), whose members themselves can only be removed by the President for good cause. SEC Commissioners, who have powers of appointment over ALJs, cannot act without approval from MSPB and themselves enjoy for-cause protection against removal. By insulating SEC ALJs from control by the President, these multiple layers of tenure protection violate Article II of the United States Constitution.

7. The second is a violation of Ms. Cochran's right to due process under law. Simply put, the SEC consistently ignores its own rules, deadlines and procedures. This violation is especially prejudicial in the reinstated proceeding against Ms. Cochran, which will end up being heard at least five years after the pertinent events took place.

8. The SEC could have brought its original proceeding against Ms. Cochran in a federal district court or in an administrative proceeding before the Commission. Instead, it chose to bring that action before an unconstitutionally-appointed ALJ. It

should not be permitted to force Ms. Cochran to litigate before yet another unconstitutionally-appointed ALJ before she can assert her valid constitutional claims in an Article III court.

9. Administrative agencies such as the SEC are neither equipped nor authorized to hear and decide constitutional questions. Instead, “[i]t is emphatically the province and duty of the judicial department to say what the law is”—including, most especially, in constitutional cases. *Marbury v. Madison*, 5 U.S. (1 Cr.) 137, 177 (1803). For Ms. Cochran’s constitutional claims to be adjudicated in a just and constitutional manner, she must be permitted to assert them in an Article III court.

PARTIES

10. Plaintiff Michelle Cochran is a resident of Coppell, Texas.

11. Defendant United States Securities and Exchange Commission is an independent agency of the United States government headquartered in Washington, DC. Ms. Cochran’s original proceeding was prosecuted by the SEC’s regional office in Fort Worth, Texas, and her current proceeding is being prosecuted by the same regional office.

12. Defendant Jay Clayton is the Chairman of the United States Securities and Exchange Commission. He is sued in his official capacity.

13. Defendant Matthew G. Whitaker is the acting Attorney General of the United States, and the head and principal officer of the United States Department of Justice. He is sued in his official capacity.

JURISDICTION AND VENUE

14. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1346, 1651, 2201 and 5 U.S.C. §§ 702 and 706.

15. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (e) because Ms. Cochran resides in this judicial district and a substantial part of the events or omissions giving rise to her claims occurred in this judicial district.

FACTUAL BACKGROUND

16. Michelle Cochran is a CPA licensed in Texas. In 2007, after being out of the work force for some time, Ms. Cochran went to work for The Hall Group CPAs, a small auditing firm founded by David Hall.

17. The Hall Group CPAs did auditing work, mostly for nonprofits and privately held companies, but it also handled audits for a few, small, publicly traded companies. At the time, firm was a registered public accounting firm under the Securities and Exchange Act of 1934 (the “Exchange Act”) and the rules of the Public Company Accounting Oversight Board. (PCAOB).

18. Ms. Cochran began with The Hall Group as a part-time hourly contractor, working ten to fifteen hours per week as an auditor. She gradually increased her hours, and by 2012, she was working approximately thirty-five hours per week.¹

19. The work atmosphere at The Hall Group was stressful and unpleasant. Hall often yelled at and

¹ The SEC’s documents refer to Ms. Cochran as “Michelle Helterbran Cochran.” She has since dropped “Helterbran” from her name.

belittled his employees, including Cochran. Often unhappy with the number of hours incurred on an engagement, Hall sometimes took files away from employees before they could complete all the paperwork. Compounding this problem, Hall often took on more work than the small staff could complete on time. Some employees quit with little or no advance notice.

20. Ms. Cochran clashed with Hall often. Among other reasons, Hall pressured Ms. Cochran to become a non-equity partner in firm. Hall needed an additional partner for two reasons. First, he needed to satisfy the Texas accounting board, which had opposed his use of the firm name “The Hall Group CPAs” because Hall was the only partner. Second, in order to conduct audits of public companies, Hall needed to comply with section 10(j) of the Exchange Act, which prohibits auditors from overseeing more than five annual audits of any one company in a row. By making Ms. Cochran a partner, Hall could assign audits he could not perform to her.

21. Ms. Cochran did not want to become a partner, however, as she was only a part-time employee and was uncomfortable with the potential liability that partnership might entail. Hall continued to press the issue, and ultimately made becoming a partner conditional on her continued employment at the firm.

22. Eventually, Ms. Cochran relented. In February 2012, Hall made Ms. Cochran a non-equity partner in the firm. The position entailed no increase in pay, and Ms. Cochran’s compensation continued to be based on the number of hours she worked each week. Hall remained the only equity partner and 100% owner of the firm.

23. In May 2013, Ms. Cochran resigned from The Hall Group. Her last day was July 1, 2013.

The SEC's Charges Against The Hall Group

24. On April 26, 2016, the Public Company Accounting Oversight Board ("PCAOB") issued an order censuring David Hall and The Hall Group for violations of PCAOB accounting standards with respect to several annual audits and quarterly reviews. The order fined the firm \$10,000 and revoked its PCAOB registration. It also censured David Hall and barred him from "being an associated person of a registered public accounting firm" for at least three years. These penalties were based on his own actions and his role in directing others in his firm. PCAOB Release No. 105-2016-015, at 1 (April 26, 2016).

25. On the same day, the SEC filed an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) against David Hall and The Hall Group, but unlike PCAOB, the SEC also named Michelle Cochran and Susan A. Cisneros, another accountant who had worked as a contractor at the firm, as respondents. (Collectively, "the Hall Respondents"). The SEC alleged various violations of the Exchange Act, most of which resulted from the Hall Respondents' alleged failure to comply with PCAOB auditing standards with respect to a number of quarterly reviews and annual audits the firm had conducted for several public companies between 2010 and 2013. Exchange Act Release No. 77718 (April 26, 2016).

26. More specifically, the SEC alleged that (a) the Hall Respondents had failed adequately to document several audits and/or reviews; (b) that they had failed

to obtain proper “engagement quality reviews” for several audits and reviews; (c) that, as a result of these alleged violations, they had filed audit reports falsely stating that the aforementioned audits and reviews were conducted according to PCAOB standards; (d) that David Hall improperly participated in audits of some companies after having acted as the lead audit partner for the same companies in each of the previous five years, and (e) that Hall had directed audits of a company that employed Hall as its CFO, even though he had a direct financial interest and business relationship with both the auditor and the company under review.

27. Many of the allegations against the Hall Respondents had nothing to do with Ms. Cochran and involved conduct that occurred either before she had become a nonequity partner in the firm or after she had left the firm. The allegations that did implicate Ms. Cochran in allegedly deficient audits fell only into the first three categories, above. Her liability for these alleged violations was premised on the fact that she had been designated as the engagement partner on several of the allegedly deficient audits and had therefore allegedly “aided and abetted” The Hall Group’s violations.

The SEC’s Enforcement Proceedings Against The Hall Group

28. Under the Exchange Act, the SEC had the option of bringing its enforcement proceedings against the Hall Respondents either in federal district court or in an administrative proceeding. 15 U.S.C. §§ 78d-1(a), 78u(d). It elected to institute proceedings against the Hall Respondents before an unconstitutionally-appointed administrative law judge, Cameron Elliot—the same ALJ whose

appointment the Supreme Court later held unconstitutional in *Lucia v. SEC*.

29. Indeed, when the SEC filed its Order Instituting Proceedings against the Hall Respondents on April 26, 2016, it was already defending the appointment of its ALJ's before the D.C. Circuit Court of Appeals in *Lucia v. SEC*, 832 F.3d 277 (2016) (holding appointment of ALJ constitutional), and the Tenth Circuit in *Bandimere v. SEC*, 844 F.3d 1168 (2016) (holding appointment of ALJ unconstitutional). Hence, the agency was already on notice of the potentially unconstitutional status of its ALJs but chose to proceed before them anyway.

30. When the SEC filed its OIP against the Hall Respondents, ALJ Elliot had not been appointed by the Commission. Instead, he and the other SEC ALJs were appointed by the Chief ALJ, not by a constitutionally authorized officeholder.

31. ALJ Elliot was reported at the time to have “found the defendants liable in every contested case he has heard” and to have said to defendants during settlement discussions that “they should be aware he had never ruled against the agency’s enforcement division.” See Jean Eaglesham, *Fairness of SEC Judges Is in Spotlight*, Wall St. J. (Nov. 22, 2015).

32. In the April 26, 2016 OIP against the Hall Respondents, the Commission ordered, pursuant to Rule 360(a)(2) of the SEC’s Rules of Practice, that a hearing “shall be convened not earlier than 30 days and not later than 60 days from service of this Order” before an ALJ and that the ALJ “shall issue an initial decision no later than 300 days from the date of service of this Order.” Exchange Act Release No. 77718 at 10-11 (April 26, 2016).

33. Ms. Cochran was served with the OIP on May 2, 2016.

34. On May 19, 2016, ALJ Elliot issued an order postponing the mandatory hearing indefinitely. In the order, ALJ Elliot wrote, “Unless Respondents indicate otherwise, I construe their consent to the hearing date’s postponement as a waiver of their right to a hearing within thirty to sixty days of service of the OIP,” as directed by 15 U.S.C. § 78u-3(b). *Order Postponing Hearing and Scheduling Prehearing Conference*, Administrative Release No. 3853 (May 19, 2016).

35. At a pretrial conference on May 25, 2016, ALJ Elliot informed Ms. Cochran and the other Hall Respondents that SEC rules required that he hold a hearing by September 11, 2016, even though that was more than 130 days after service of the OIP. He then suggested that the hearing be held on October 24, 2016, which was 175 days after service of the OIP. ALJ Elliot did not discuss the 60-day statutory deadline with Ms. Cochran. Based on ALJ Elliot’s representations, she agreed to the October date for a hearing.

36. On October 24, 2016, the day of the hearing, David Hall settled the charges against him and his firm. While neither admitting nor denying the allegations against them, Hall and his firm agreed to a permanent ban from practicing as accountants before the SEC and a \$25,000 fine. Hall’s liability was premised not only on directing Ms. Cochran and Susan Cisneros to conduct allegedly inadequate audits between 2010 and 2013, but also on inadequate audits that Hall conducted, both before Ms. Cochran became a nonequity partner in the firm and after she left the firm. *Order Making Findings and Imposing*

Remedial Sanctions, Exchange Act Release No. 79147 (Oct. 24, 2016).

37. Hall's liability was also premised on a transaction that occurred after Ms. Cochran left The Hall Group. In 2014, Hall sold his auditing practice to a firm called Thakkar CPA. As part of the deal, Hall accepted a promissory note from Thakkar CPA for \$313,516. Hall also helped Thakkar CPA obtain business from his former audit clients. One, DynaResources, Inc., engaged Thakkar CPA as its auditor after hiring Hall as its CFO. As a result, Hall as CFO of DynaResources, Inc. had allowed Thakkar CPA to conduct audits for the company while Hall had a financial interest in the auditor. This conflict of interest constituted a violation of PCAOB standards by Thakkar CPA and a violation of the Exchange Act by Hall and DynaResources, Inc.

38. Also on October 24, 2016, ALJ Elliot began a two-day hearing on the charges against Ms. Cochran and Ms. Cisneros. Both appeared, *pro se*. Hall testified for the SEC.

39. At the time, not only had ALJ Elliot not been constitutionally appointed by the SEC to act as a hearing officer, but ALJ Elliot also enjoyed multiple layers of protection from removal as an ALJ.

40. Ms. Cochran opposed the SEC's claims against her. Among other things, she pointed out that no audits on which she worked ever had to be restated, and that no clients or shareholders ever complained or alleged any harm resulting from any audits she performed. Additionally, the relevant audits occurred at least three years prior to the hearing (sometimes longer), and once Ms. Cochran left The Hall Group, she had no control over the audit

files and thus no way to verify that the files Hall had produced to the SEC were complete.

41. ALJ Elliot issued his Initial Decision on March 7, 2017. He held for the SEC on nearly all of its claims against Ms. Cochran, fining her \$22,500 and banning her from practicing as an accountant before the SEC, but allowing her to reapply for permission to practice after five years. ALJ Elliot also banned Ms. Cisneros from practicing before the SEC as an accountant and fined her \$10,000. *Initial Decision as to Michelle L. Helterbran Cochran, CPA, and Susan Cisneros*, Initial Decision Release No. 1114 (March 7, 2017).

42. The SEC issued a notice adopting ALJ Elliot's Initial Decision as final on June 15, 2017. *Notice*, Exchange Act Release No. 80949 (June 15, 2017). However, on July 25, 2017, Ms. Cochran objected to the SEC's order on the ground that she had not been properly served with the Initial Decision and thus had not been afforded the opportunity to seek review from the Commission. The Commission ordered briefing on the issue on August 8, 2017. Shortly thereafter, however, events in connection with *Lucia v. SEC* in the Supreme Court affected further proceedings in Ms. Cochran's case, and ultimately led to an order from the Commission vacating ALJ Elliot's decision in her case and ordering new proceedings before a different ALJ.

The *Lucia* Case and the SEC's Reassignment of ALJs

43. On July 21, 2017, Raymond Lucia filed a petition for certiorari in the U.S. Supreme Court. An investment professional, Lucia had been charged with securities fraud by the SEC in 2012. He fought the SEC's charges before ALJ Cameron Elliot, appealed

ALJ Elliot's adverse decision to the full Commission, and then appealed the Commission's adverse decision to the D.C. Circuit. Among other things, Lucia argued that the ALJ's appointment violated the Constitution's Appointment Clause of Article II. A three-judge panel ruled against Lucia, and the full D.C. Circuit sitting *en banc* evenly split, resulting in a win for the SEC and prompting Lucia's appeal to the Supreme Court.

44. On November 29, 2017, the United States Solicitor General filed its response to Lucia's petition on behalf of the SEC. The Solicitor General *agreed* with Lucia that ALJ Elliot's appointment was unconstitutional. The next day, the SEC issued an order announcing its effort to "put to rest" any claim that its ALJs were not constitutionally appointed by ratifying the agency's "prior appointment of" all SEC ALJs. *Order*, Securities Act of 1933 Release No. 10440 (Nov. 30, 2017).

45. In the same order, the Commission remanded Ms. Cochran's case back to ALJ Elliot with instructions to consider whether he should ratify his prior decision in her case.

46. On January 26, 2018, ALJ Elliot ratified his earlier decision, over Ms. Cochran's objection. Administrative Proceedings Rulings, Release No. 5544 (Jan. 26, 2018). Ms. Cochran then petitioned the Commission for review on February 18, 2018.

47. On June 21, 2018, the United States Supreme Court issued its decision in *Lucia v. SEC*. The Court held that, under its earlier decision in *Freytag v. Commissioner*, 501 U.S. 868 (1991), SEC ALJs were "Officers of the United States" within the meaning of the Appointments Clause, and therefore had to be

appointed by the President or the Head of a Department. *Lucia*, 138 S. Ct. at 2055. Because SEC ALJs were not so appointed, the Court vacated all prior proceedings in Lucia’s case and directed the SEC to hold a new hearing before a different, properly appointed ALJ. *Id.*

48. In footnote 6 of the *Lucia* opinion, the Court explained that it was declining to address the fully-briefed question of whether the November 30, 2017 ratification was effective, because “The Commission has not suggested that it intends to assign Lucia’s case on remand to an ALJ whose claim to authority rests on the ratification order. The SEC may decide to conduct Lucia’s rehearing itself. Or it may assign the hearing to an ALJ who has received a constitutional appointment independent of the ratification.” *Id.* at 2055 n. 6.

49. On August 22, 2018, the Commission ordered that Ms. Cochran, along with all other respondents in pending matters, “be provided with the opportunity for a new hearing before an ALJ who did not previously participate in the matter,” and “vacate[d] any prior opinions” issued in her matter. *Order*, Exchange Act Release No. 83907, at 1 (Aug. 22, 2018).

50. In that same order, the SEC again attempted to ratify the appointments of all ALJs who were appointed unconstitutionally, stating, “On November 30, 2017, we ratified the appointments of Chief Administrative Law Judge Brenda Murray and Administrative Law Judges Carol Fox Foelak, Cameron Elliot, James E. Grimes, and Jason S. Patil to the office of administrative law judge in the Securities and Exchange Commission. In an abundance of caution and for avoidance of doubt, we

today reiterate our approval of their appointments as our own under the Constitution.” *Id.*

51. On September 12, 2018, Chief Administrative Law Judge Brenda P. Murray assigned Ms. Cochran’s matter to Administrative Law Judge Carol Fox Foelak and ordered that by no later than October 3, 2018, ALJ Foelak issue an order directing the parties to submit proposals for the conduct of further proceedings. *Chief Administrative Law Judge’s Order Assigning Proceedings Post Lucia v. SEC*, Administrative Proceedings Rulings, Release No. 5955 (September 12, 2018).

52. In a document issued by the USDOJ entitled “Guidance on Administrative Law Judges after *Lucia v. SEC* (S. Ct.),” the Solicitor General suggested, “Additionally, it would be fitting for the ratifications to be accompanied by an appropriate degree of public ceremony and formality. . . . for example, a Department Head might re-administer the oath of office to incumbent ALJs in a public ceremony, or on record of a regular public hearing or meeting. These steps . . . [though not strictly necessary] will underscore that the Department Head has satisfied the purposes of the Appointments Clause by accepting public responsibility for the appointment of specific persons to the office of ALJ.”

53. On September 28, 2018, the Commission responded to a Freedom of Information Act request about the steps it had taken to appoint its ALJs properly. Although the SEC has identified 89 pages of records responsive to that request, it decided to “withhold these records in their entirety” under various exemptions, including work product/anticipation of litigation. Hence, it is not

publicly known whether the SEC complied with the USDOJ's directive.

The Administrative Scheme and the Removal Power

54. The SEC may bring actions in federal district court or it may elect to seek civil penalties in administrative proceedings against an entity it finds “is violating or has violated any provision of [the Exchange Act], or any rule or regulations issued under [the Exchange Act],” 15 U.S.C. §§ 78d-1(a), 78u(d).

55. The SEC's jurisdiction pursuant to the Exchange Act is limited to consideration of whether conduct violated the Securities laws—and that topic alone. *See* 15 U.S.C. §§ 78u(a)(1) (“Authority and discretion of Commission to investigate violations” of the Exchange Act).

56. The administrative process departs from federal court process in many ways. Among others, respondents are denied their rights to trial by jury and they have far more limited discovery and depositions. The protections afforded by the Federal Rules of Civil Procedure and the Federal Rules of Evidence are not available, meaning that ALJs have virtually unfettered discretion over what witnesses and evidence will be allowed, and may admit hearsay and curtail testimony and exhibits. Most importantly, administrative proceedings are investigated, prosecuted and judged by agency employees who are beholden to the entity that has brought the charges. By contrast, in federal court, the judge is independent, unbiased and not beholden to the prosecuting agency.

57. All SEC ALJs have multiple levels of protection against removal. Specifically, they can be removed only if the Merit Systems Protection Board (MSPB) finds good cause to remove them, 5 U.S.C. § 7521(a), and the members of that board can be removed only for good cause. 5 U.S.C. § 1202(d). SEC Commissioners, who have powers of appointment over ALJs, cannot act to remove them without approval from the MSPB, 5 U.S.C. § 7521, and the Commissioners themselves enjoy for-cause protection against removal.

58. This scheme violates Article II of the Constitution.

The SEC's Disregard of Its Own Rules and Deadlines

59. SEC administrative enforcement proceedings are governed by statutes set forth in 15 U.S.C. § 78u-3(b). These statutes require that the Commission's order instituting administrative proceedings "shall fix a hearing date not earlier than 30 days nor later than 60 days after service" of the OIP "unless an earlier or later date is set by the Commission with the consent of any respondent so served."

60. Ms. Cochran did not knowingly or intelligently waive this mandatory date for commencement of her proceedings.

61. SEC Rules reinforce this strict deadline to hold the hearing and also require that the ALJ issue an initial decision no later than 300 days from the service of the OIP. Rule 360(a)(2), SEC Rules of Practice, 17 C.F.R. § 201.360(a)(2).

62. The Commission had to commence its hearing within 60 days from the issuance of the OIP. This 60-day deadline was statutorily required. 15 U.S.C.

§ 78u-3(b). It was also required by the Commission's rules of practice. 17 C.F.R. § 201.360(a)(2)(ii). And a properly-appointed ALJ was required to issue a decision no later than 120 days after the hearing. 17 C.F.R. § 201.360(a)(2)(i). All of these deadlines have passed.

63. Indeed, in its order of August 22, 2018 reassigning Ms. Cochran's matter to a new ALJ, the Commission said all deadlines in Ms. Cochran's proceeding "are hereby vacated and superseded by the procedures and deadlines set forth in this order." The Commission then ordered the new ALJ in Ms. Cochran's proceeding to "compute the deadlines for scheduling a hearing and issuing an initial decision as specified in amended Rule of Practice 360(a)(2) from the date the proceeding is assigned to a hearing officer pursuant to this order, rather than the date of service of the relevant order instituting proceedings." The Commission also said that all proceedings that had been instituted under the former timing rules in Rule 360, "shall be deemed proceedings" under the amended rules, and it asserted that the "supersed[ing]" rules for deadlines outlined in the Order "confer no procedural or substantive rights on any party," and could be "modif[ied]" by the ALJ on her own initiative, notwithstanding any contrary provision in the Rules of Practice.

64. The Commission did not set a deadline for either the new hearing to be held, or for the newly-assigned ALJ to issue an opinion. Instead, the Commission directed the ALJs to request "proposals" from the parties "for the conduct of further proceedings."

65. On October 2, 2018, ALJ Foelak ordered plaintiff and the SEC Division of Enforcement to

submit “a joint proposal for the conduct of further proceedings by November 23, 2018.” On November 15, 2018, ALJ Foelak stayed that order for 15 days by agreement of the parties. Ms. Cochran retained the undersigned counsel on December 12, 2018 and filed an agreed motion to extend the deadline to file the joint proposal until January 3, 2019. On January 3, 2019, Ms. Cochran, through counsel, filed a motion to dismiss the enforcement action against her. On January 4, 2019, the SEC filed an unopposed motion to stay the proceedings due to the government shutdown.

66. SEC enforcement actions give the Commission power to impose monetary penalties of up to \$100,000 on Ms. Cochran for *each* alleged violation of the Exchange Act. 15 U.S.C. §§ 78u(d)(3)(B)(i)-(ii). These punitive sanctions are separate from, and in addition to, disgorgement of funds. *See* 15 U.S.C. § 78u-2.

67. The Commission’s ability to ban Ms. Cochran from practicing as an accountant before the SEC implicates both First Amendment associational rights and property rights to engage in her chosen profession.

68. Deprivations in administrative proceedings such as these can often be more significant than even criminal sanctions. As Justice Gorsuch recently wrote,

Ours is a world filled with more and more civil laws bearing more and more extravagant punishments. Today’s “civil” penalties include confiscatory rather than compensatory fines, forfeiture provisions that allow homes to be taken, remedies that strip persons of their

professional licenses and livelihoods, and the power to commit persons against their will indefinitely. Some of these penalties are routinely imposed and are routinely graver than those associated with misdemeanor crimes—and often harsher than the punishment for felonies.

Sessions v. Dimaya, 138 S. Ct. 1204, 1229 (2018) (Gorsuch, J., concurring).

69. Echoing these concerns, SEC Commissioner Hester Peirce noted in a recent speech: “Punishing every small violation. . . means casting discretion aside in favor of making the SEC look tough. Violations are not all equally serious. I agree with Commissioner Michael Piwowar, who notes: ‘If every rule is a priority, then no rule is a priority.’” . . . While following the ‘broken windows’ approach, perhaps the SEC should have changed its name to the ‘Sanctions’ and Exchange Commission, because it acted like a branch of the U.S. Attorney’s Office for the Southern District of New York.” Hester M. Peirce, *The Why Behind the No*, Remarks at the 50th Annual Rocky Mountain Securities Conference, May 11, 2018.

70. She further expressed concern with “rulemaking by enforcement.” “Due process starts with telling individuals in advance what actions constitute violations of the law. . . . It is wrong to try to do an end run around the APA by using the enforcement process to make policy. Instead, the Enforcement Division only should bring actions based on established legal obligations.” *Id.*

71. Commissioner Peirce also observed: “The effects of an investigation or proceeding on a private party can be devastating. . . . For the

individual under investigation, professional careers, reputations, and personal relationships can suffer. As the SEC's canons of ethics put it: 'The power to investigate carries with it the power to defame and destroy.' This price is too high for violations that are minor." *Id.*

72. The Commission as a whole encompasses both the enforcement entity that investigates and prosecutes alleged violations and the Office of Administrative Law Judges. *See* 17 C.F.R. §§ 200.14 (Office of Administrative Law Judges), 200.19b (Director of the Division of Enforcement). Moreover, the Commission has the final say within the administrative proceeding concerning liability. 17 C.F.R. § 201.411.

73. On information and belief, the SEC enjoys a 90% success rate in its own hearings but has only a 69% success rate "against defendants in federal court." Jean Eaglesham, *SEC Wins with in-House Judges*, Wall St. J. (May 6, 2015). Moreover, the Commission has decided appeals from initial decisions "in their own agency's favor" 95% of the time between October 2010 and March 2015. *Id.* Likewise, *The New York Times* reported similar statistics reflecting a higher win percentage in SEC administrative hearings than in federal court. Gretchen Morgenson, *At the SEC, a Question of Home-Court Edge*, N.Y. Times (Oct. 5, 2013).

74. These structural biases factually and statistically play out in favor of the SEC and the imposition of liability. Ms. Cochran has already endured an extended administrative hearing in front of an ALJ beholden to the same entity that employs him, promulgates, interprets and/or ignores its own rules. Further its enforcement division is prosecuting

Ms. Cochran. The Commission routinely accepts the ALJ decision as its own, and to the extent it hears the appeal, it relies heavily on its ALJ's findings of fact and conclusions of law.

75. Indeed, any facts found by the ALJ, and adopted by the Commission, are deemed "conclusive" so long as they are premised on "substantial evidence." *Steadman v. SEC*, 450 U.S. 91, 97 n. 12 (1981).

76. The SEC orders set forth above violate their own rules, procedures and deadlines and thus deprive Ms. Cochran of her rights to due process under law. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954).

77. Declaratory and injunctive relief is necessary to prevent Ms. Cochran from being compelled to submit—yet again—to an unconstitutional proceeding and from suffering further irreparable professional, reputational and financial harm, all without meaningful judicial review.

78. If these unlawful administrative proceedings result in adverse findings against Ms. Cochran, the ALJ's and/or Commission's findings would be given substantial deference, entrenching the harm caused by the SEC's unconstitutional proceedings.

79. Without the requested declaratory and injunctive relief, Ms. Cochran will suffer irreparable harm by being forced to undergo—for the second time—an expensive, time-consuming, reputation-destroying, unconstitutional proceeding. Judicial review after that unconstitutional proceeding cannot and does not provide meaningful relief for the constitutional violations at issue in this matter.

CAUSES OF ACTION

COUNT ONE

(Application for Injunctive Relief)

**(The Administrative Proceedings Violate
Article II of the United States Constitution)**

80. Plaintiff repeats and realleges each and every allegation of the preceding paragraphs above, as if fully set forth herein.

81. SEC ALJs are “Officers of the United States” who may only be removed for good cause as determined by the Merit Systems Protection Board (MSPB), 5 U.S.C. § 7521(a), whose members themselves can only be removed by the President for good cause. 5 U.S.C. § 1202(d). SEC Commissioners, who have powers of appointment over ALJs, cannot act without approval from MSPB and themselves enjoy for-cause protection against removal. *MFS Sec. Corp. v. SEC*, 380 F. 3d 611, 619-20 (2d Cir. 2004).

82. These multiple layers of tenure protection violate Article II of the United States Constitution.

83. Without injunctive relief from this Court, Plaintiff will be required to submit to an unconstitutional proceeding. This in and of itself constitutes irreparable harm to plaintiff unless the SEC’s re-instituted administrative proceeding is enjoined.

84. Furthermore, if the SEC, upon recommendation from the ALJ, finds against Plaintiff, the harm will be severe and irreparable. Ms. Cochran has already been barred from practicing as an accountant before the Commission for almost a year and a half, she has suffered irreparable professional and reputational damage, and incurred time and expense in defending

herself. Ms. Cochran is unable under the SEC's administrative adjudication scheme to obtain meaningful judicial review in time to prevent further damage to herself. Nor can this harm be remedied with after-the-fact money damages, as these are irreversible and non-compensable losses.

85. Plaintiff has a substantial likelihood of success on the merits of her claims. The harm to Plaintiff far outweighs any harm, or even inconvenience, to the SEC, if such relief is granted. Plaintiff has filed this action as early in the proceedings as possible, before any substantial government resources or time has been expended on the re-prosecution of the administrative proceeding. Finally, the grant of an injunction will serve the public interest by protecting Americans' constitutional rights.

COUNT TWO

(Declaratory and Injunctive Relief)

(The Administrative Proceedings Violate Article II of the United States Constitution)

86. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs above, as if fully set forth herein.

87. SEC ALJs may only be removed for good cause as determined by the MSPB, 5 U.S.C. § 7521(a), whose members themselves can only be removed by the President for good cause. 5 U.S.C. § 1202(d). SEC Commissioners, who have powers of appointment over ALJs, cannot act without approval from MSPB and are themselves protected by for-cause protection against removal. *MFS Sec. Corp. v. SEC*, 380 F. 3d 611, 619-20 (2d Cir. 2004).

88. These multiple layers of tenure protection violate Article II of the United States Constitution.

COUNT THREE

(Declaratory Judgment)

(The SEC's Reinstated Administrative Proceedings Violate Constitutionally Required Deadlines)

89. Plaintiff repeats and realleges each and every allegation in the preceding paragraphs above, as if fully set forth herein.

90. The SEC's reinstated administrative proceeding violates its own rules of practice and mandatory deadlines. If an agency disregards rules governing its behavior, this deprives an affected entity of the constitutionally guaranteed "due process." *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). These principles, often referred to generally as the "*Accardi* doctrine," are so fundamental that an agency's disregard of rules that "afford greater procedural protections" upon parties will void agency action even without a showing of prejudice. *Vitarelli v. Seaton*, 359 U.S. 535, 539 (1959).

91. The Commission had to commence its hearing within 60 days from the issuance of the OIP. This 60-day deadline was statutorily required. 15 U.S.C. § 78u-3(b). It was also required by the Commission's rules of practice. 17 C.F.R. § 201.360(a)(2)(ii). And a properly-appointed ALJ was required to issue a decision no later than 120 days after the hearing. 17 C.F.R. § 201.360(a)(2)(i). Under the *Accardi* doctrine, due process therefore requires adherence to these deadlines.

92. But today, more than two years after the OIP was issued, there has never been a proper hearing before an administrative law judge, and there has been no proper decision on the merits. The OIP is, in essence, expired. This voids the SEC's action against Ms. Cochran regardless of any prejudice to her. *See Vitarelli*, 359 U.S. at 539.

93. However, the prejudice to Ms. Cochran is manifest. The events that gave rise to the SEC's enforcement proceeding took place no less than five years ago and for some events longer than that, meaning memories will have faded, some relevant witnesses may be unavailable to testify, and documents necessary for Ms. Cochran to present her defense may be unavailable. As a result, Ms. Cochran is undeniably hampered in presenting her defense.

94. Although the SEC could have brought an action against Plaintiff either in a federal district court or before the Commission, it chose to bring the action before an unconstitutionally unappointed ALJ. When it brought this action, the SEC was aware of potential constitutional problems with its ALJs—problems so significant that the Department of Justice took the extraordinary step of confessing error before the Supreme Court. Having clung to its erroneous position that the ALJ was properly appointed, the SEC must live with the consequences of its choice to bring this action before an improperly installed ALJ.

95. *Accardi* requires that the Commission follow its own rules, and having elected an unconstitutional proceeding, it may not now maintain a new proceeding under the expired OIP.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an Order and Judgment:

Declaring unconstitutional the statutes, regulatory provisions guidance and policies providing for the removal of SEC ALJs as applied by the SEC;

Declaring unconstitutional the SEC's disregard of its own statutes, regulatory provisions and policies;

Enjoining the SEC from carrying out an administrative proceeding against Ms. Cochran based on the allegations in the OIP or any other allegations arising from the same transactions or occurrences relied upon in the OIP;

Providing such other and further relief as this Court may deem just and proper, including reasonable attorney's fees and costs of this action.

Dated: January 18, 2019

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