

## **21-86 AXON ENTERPRISE, INC. V. FEDERAL TRADE COMMISSION**

DECISION BELOW: 986 F.3d 1173

LOWER COURT CASE NUMBER: 20-15662

### **QUESTION PRESENTED:**

After petitioner acquired an essentially insolvent competitor, it found itself subjected to the review of the Federal Trade Commission (FTC), rather than the Department of Justice (DOJ). While the DOJ route promises early access to judicial review, the FTC track is an altogether different matter. Petitioner faced a series of unreasonable demands from the FTC, and the prospect of “litigating” before administrative law judges insulated by unconstitutional double-for-cause removal restrictions and subject to review by an unaccountable Commission. Rather than resign itself to the ongoing unconstitutional injuries inflicted by the FTC’s process, petitioner filed suit in district court seeking to enjoin the unconstitutional FTC proceedings. That lawsuit focused on constitutional issues collateral to the underlying antitrust issues, but the district court nonetheless dismissed it for want of jurisdiction based on implications drawn from a statutory grant of jurisdiction to review the FTC’s cease-and-desist orders. A divided Ninth Circuit affirmed, with the majority acknowledging that dismissal “makes little sense,” and the dissent contending that dismissal contradicted this Court’s precedents.

The questions presented are:

1. Whether Congress impliedly stripped federal district courts of jurisdiction over constitutional challenges to the Federal Trade Commission’s structure, procedures, and existence by granting the courts of appeals jurisdiction to “affirm, enforce, modify, or set aside” the Commission’s cease-and-desist orders.
2. Whether, on the merits, the structure of the Federal Trade Commission, including the dual-layer for-cause removal protections afforded its administrative law judges, is consistent with the Constitution.

**LIMITED TO QUESTION 1 PRESENTED BY THE PETITION**

**CERT. GRANTED 1/24/2022**