



In granting a petition to review the Ninth Circuit's decision in [Somers v. Digital Realty](#), the Supreme Court will resolve a circuit court split on the issue of whether Dodd-Frank prohibits retaliation against internal whistleblowers who did not report their concerns about potential securities law violations to the SEC.

In March, partners [Tony Caliendo](#), [Todd Kerr](#), and [Michael Clyde reported](#) on *Somers*, which held that internal whistleblowers are protected, joining the Second Circuit on this issue. See [Berman v. Neo@Ogilvy LLC](#), 801 F.3d 145, 155 (2d Cir. 2015). The Fifth Circuit, the first circuit court to address the issue, has taken a different view, holding, "[u]nder Dodd-Frank's plain language and structure, there is only one category of whistleblowers: individuals who provide information relating to a securities law violation to the SEC." [Asadi v. G.E. Energy \(USA\), L.L.C.](#), 720 F.3d 620, 621 (5th Cir. 2013). Both the Ninth and Second Circuits referenced the SEC's interpretation of the relevant statute, as set forth in [Exchange Rule 21F-2](#): employees who report violations

internally are protected regardless of whether they report to the SEC. To the extent the circuit courts' rulings were based on Chevron deference to the SEC's interpretation, that could set up an interesting battle at the Supreme Court, where its newest Justice is an [outspoken critic](#) of such deference.

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