

The SEC's Power & Authority Challenged in an ALJ Court Decision

Not too long after the U.S. Supreme Court [granted cert](#) to review a decision that involves whether the SEC's administrative law judges are unconstitutionally protected from removal, a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit ruled - in a [2-1 decision](#) - that the SEC's ALJ system violated a person's right to a jury trial in federal court and relied upon unconstitutionally delegated legislative power. That Fifth Circuit ruling also found that statutory restrictions on the ALJ's removal were unconstitutional.

Normally, we wouldn't cover this sort of thing in this blog as it's a little far afield from the practical in-house-oriented content we try to cover, but the Fifth Circuit's ruling was so broad that it has many practitioners buzzing. Potential implications may include more cases, and decisions in other circuits or even the U.S. Supreme Court, challenging the authority and power of the SEC—as well as that of other federal agencies.

Over at least the last decade, there have been increased efforts to rein in federal agencies. The Fifth Circuit ruling broadly discusses the "non-delegation doctrine," a long dormant doctrine that holds that Congress can't delegate its legislative powers to other entities.

We won't get into the weeds to discuss the ALJ debate at length. We just wanted to give you a heads up of what may be coming down the pike...

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