

In The
Supreme Court of the United States

SECURITIES AND EXCHANGE COMMISSION,

Petitioner,

v.

GEORGE R. JARKESY, JR., and PATRIOT28 LLC,

Respondents.

MOTION OF AMICI CURIAE
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

Pursuant to Rule 28.7, counsel for the amici curiae Administrative Law Scholars move for leave to participate in oral argument in this case. Counsel for both petitioner and respondents oppose this motion. The case has not been calendared as of this date.


On September 1, 2023, amici filed their brief which supports petitioner, the Securities and Exchange Commission (SEC), with one exception. They agree with petitioner that the for-cause limitations on the removal of administrative law judges (ALJs) at the SEC are constitutional. Respondents and the Fifth Circuit argue that the double for-cause limitation that this Court struck down in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010), applies to ALJs at the SEC. Amici agree with petitioner that, because ALJs have no policymaking function, and because their decisions are fully reviewed by the Commission, the rationale utilized in *Free Enterprise* does not apply and the ruling below on that issue

should be reversed. However, in its brief (at 66), petitioner took the position that, if this Court concluded that *Free Enterprise* did apply to this case, the Court should set aside the limitations on ALJ removal. Amici disagree that the Court should adopt that remedy.

As amici explained in their brief (at 3-4 & 18-20), if the Court concludes that double for-cause removals are unconstitutional, the problem can be solved either by setting aside the removal restrictions applicable to SEC Commissioners or those applicable to its ALJs. In contrast to petitioner, amici argue that the preferred remedy is to retain the express limits for ALJs that Congress included 77 years ago in the Administrative Procedure Act, rather than the implied limits for SEC Commissioners, which have never been codified by Congress.

Accordingly, amici move this Court for leave for their counsel of record to present five minutes of oral argument limited to the remedy argument. Unless amici are permitted to argue this limited issue orally, no party will take the position urged by amici that seeks to present the maximum defense of the provision of the APA enacted by Congress.

Respectfully Submitted,



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