
Recent Cases Consider Challenges to Constitutionality of SEC's Administrative Law Judges

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Since the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) expanded the authority of the Securities and Exchange Commission (“SEC”) to seek civil penalties through administrative proceedings, the SEC has brought, as one court observed, “an ever increasing number of enforcement actions within its own administrative scheme, rather than in federal court.” In 2014, for instance, the SEC initiated 43% of its litigated actions as administrative proceedings. This shift may be due, at least in part, to the reported advantage the SEC enjoys before its own Administrative Law Judges (“ALJs”). From October 2010 through March 2015, the SEC won 90% of its litigated administrative proceedings. By comparison, the SEC won only 69% of the cases it brought in district court over the same time period.

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