
Fifth Circuit Holds That District Courts May Hear Structural Constitutional Challenges to Ongoing SEC Enforcement Actions

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Federal district courts are imbued with “original jurisdiction” over “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. The Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78y, however, provides that “[a] person aggrieved by a final order of the [Securities and Exchange Commission (“SEC”)] may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit.” In recent years, several circuit courts of appeals have held that this provision of the Exchange Act implicitly strips federal district courts of subject matter jurisdiction to hear challenges to *ongoing* SEC enforcement proceedings.

Contrary to the holding of each circuit court of appeals that has previously considered the issue, and following a rehearing *en banc*, the United States Court of Appeals for the Fifth Circuit in *Cochran v. SEC*, 20 F.4th 194 (5th Cir. 2021) (*en banc*), held that 15 U.S.C. § 78y did not explicitly or implicitly strip the district court of subject matter jurisdiction over the plaintiff’s claim alleging that the SEC Administrative Law Judge (“ALJ”) presiding over an enforcement action against her is unconstitutionally insulated from the President’s Article II removal power. Breaking with other circuits, the Fifth Circuit held that section 78y did not divest the district court of jurisdiction to hear “structural constitutional claims” and that district courts may entertain such challenges to SEC authority that do not depend on the validity of any substantive aspect of the Exchange Act or any SEC rule, regulation, or order.

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