
***Lucia v. SEC*, No. 17-130**

In *Lucia v. SEC*, the Court held 7-2 that administrative law judges (ALJs) of the Securities and Exchange Commission (SEC) are “Officers of the United States” for purposes of the Constitution’s Appointments Clause, and accordingly must be appointed according to the methods set forth in that Clause. Justice Kagan, writing for the Court, reaffirmed that an officer is someone who exercises “significant authority pursuant to the laws of the United States.” The Court declined to elaborate on what constitutes “significant authority” because it concluded that SEC ALJs are virtually identical to the special trial judges of the United States Tax Court that the Court previously held were officers in *Freytag v. Commissioner*, 510 U.S. 868 (1991): Although neither could enter a final decision, both had the authority needed to ensure fair and orderly adversarial hearings—including the authority to take testimony, conduct trials, rule on the admissibility of evidence, and enforce discovery orders—and to issue decisions. Thus, because the special trial judges are officers, so too are the SEC ALJs. The Court went on to hold that petitioner Lucia was entitled to a new hearing before a properly appointed officer, who was not the same officer who had previously presided over his case. The Court declined to address the question of whether the SEC’s post hoc ratification of the prior appointments of its ALJs satisfied the Appointments Clause.

Justice Thomas wrote a concurring opinion which Justice Gorsuch joined. Justice Breyer authored an opinion concurring in the judgment and dissenting in part, part of which Justices Ginsburg and Sotomayor joined, that would have decided the issue on statutory, and not constitutional, grounds, and would not have required a new hearing before a different ALJ in this case. Justice Sotomayor filed a dissenting opinion, which Justice Ginsburg joined, that would require someone to have the ability to make final, binding decisions on behalf of the Government to be considered an officer.