

Syllabus

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SUPREME COURT OF THE UNITED STATES

Syllabus

**LUCIA ET AL. v. SECURITIES AND EXCHANGE
COMMISSION****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

No. 17–130. Argued April 23, 2018—Decided June 21, 2018

The Securities and Exchange Commission (SEC or Commission) has statutory authority to enforce the nation’s securities laws. One way it can do so is by instituting an administrative proceeding against an alleged wrongdoer. Typically, the Commission delegates the task of presiding over such a proceeding to an administrative law judge (ALJ). The SEC currently has five ALJs. Other staff members, rather than the Commission proper, selected them all. An ALJ assigned to hear an SEC enforcement action has the “authority to do all things necessary and appropriate” to ensure a “fair and orderly” adversarial proceeding. 17 CFR §§201.111, 200.14(a). After a hearing ends, the ALJ issues an initial decision. The Commission can review that decision, but if it opts against review, it issues an order that the initial decision has become final. See §201.360(d). The initial decision is then “deemed the action of the Commission.” 15 U. S. C. §78d–1(c).

The SEC charged petitioner Raymond Lucia with violating certain securities laws and assigned ALJ Cameron Elliot to adjudicate the case. Following a hearing, Judge Elliot issued an initial decision concluding that Lucia had violated the law and imposing sanctions. On appeal to the SEC, Lucia argued that the administrative proceeding was invalid because Judge Elliot had not been constitutionally appointed. According to Lucia, SEC ALJs are “Officers of the United States” and thus subject to the Appointments Clause. Under that Clause, only the President, “Courts of Law,” or “Heads of Departments” can appoint such “Officers.” But none of those actors had made Judge Elliot an ALJ. The SEC and the Court of Appeals for the D. C. Circuit rejected Lucia’s argument, holding that SEC ALJs are

Syllabus

not “Officers of the United States,” but are instead mere employees—officials with lesser responsibilities who are not subject to the Appointments Clause.

Held: The Commission’s ALJs are “Officers of the United States,” subject to the Appointments Clause. Pp. 5–13.

(a) This Court’s decisions in *United States v. Germaine*, 99 U. S. 508, and *Buckley v. Valeo*, 424 U. S. 1, set out the basic framework for distinguishing between officers and employees. To qualify as an officer, rather than an employee, an individual must occupy a “continuing” position established by law, *Germaine*, 99 U. S., at 511, and must “exercis[e] significant authority pursuant to the laws of the United States,” *Buckley*, 424 U. S., at 126.

In *Freytag v. Commissioner*, 501 U. S. 868, the Court applied this framework to “special trial judges” (STJs) of the United States Tax Court. STJs could issue the final decision of the Tax Court in “comparatively narrow and minor matters.” *Id.*, at 873. In more major matters, they could preside over the hearing but could not issue a final decision. Instead, they were to “prepare proposed findings and an opinion” for a regular Tax Court judge to consider. *Ibid.* The proceeding challenged in *Freytag* was a major one. The losing parties argued on appeal that the STJ who presided over their hearing was not constitutionally appointed.

This Court held that STJs are officers. Citing *Germaine*, the *Freytag* Court first found that STJs hold a continuing office established by law. See 501 U. S., at 881. The Court then considered, as *Buckley* demands, the “significance” of the “authority” STJs wield. 501 U. S., at 881. The Government had argued that STJs are employees in all cases in which they could not enter a final decision. But the Court thought that the Government’s focus on finality “ignore[d] the significance of the duties and discretion that [STJs] possess.” *Ibid.* Describing the responsibilities involved in presiding over adversarial hearings, the Court said: STJs “take testimony, conduct trials, rule on the admissibility of evidence, and have the power to enforce compliance with discovery orders.” *Id.*, at 881–882. And the Court observed that “[i]n the course of carrying out these important functions,” STJs “exercise significant discretion.” *Id.*, at 882.

Freytag’s analysis decides this case. The Commission’s ALJs, like the Tax Court’s STJs, hold a continuing office established by law. SEC ALJs “receive[] a career appointment,” 5 CFR §930.204(a), to a position created by statute, see 5 U. S. C. §§556–557, 5372, 3105. And they exercise the same “significant discretion” when carrying out the same “important functions” as STJs do. *Freytag*, 501 U. S., at 882. Both sets of officials have all the authority needed to ensure fair and orderly adversarial hearings—indeed, nearly all the tools of fed-

Syllabus

eral trial judges. The Commission’s ALJs, like the Tax Court’s STJs, “take testimony,” “conduct trials,” “rule on the admissibility of evidence,” and “have the power to enforce compliance with discovery orders.” *Id.*, at 881–882. So point for point from *Freytag*’s list, SEC ALJs have equivalent duties and powers as STJs in conducting adversarial inquiries.

Moreover, at the close of those proceedings, SEC ALJs issue decisions much like that in *Freytag*. STJs prepare proposed findings and an opinion adjudicating charges and assessing tax liabilities. Similarly, the Commission’s ALJs issue initial decisions containing factual findings, legal conclusions, and appropriate remedies. And what happens next reveals that the ALJ can play the more autonomous role. In a major Tax Court case, a regular Tax Court judge must always review an STJ’s opinion, and that opinion comes to nothing unless the regular judge adopts it. By contrast, the SEC can decide against reviewing an ALJ’s decision, and when it does so the ALJ’s decision itself “becomes final” and is “deemed the action of the Commission.” 17 CFR §201.360(d)(2); 15 U. S. C. §78d–1(c). Pp. 5–11.

(b) Judge Elliot heard and decided Lucia’s case without a constitutional appointment. “[O]ne who makes a timely challenge to the constitutional validity of the appointment of an officer who adjudicates his case” is entitled to relief. *Ryder v. United States*, 515 U. S. 177, 182. Lucia made just such a timely challenge. And the “appropriate” remedy for an adjudication tainted with an appointments violation is a new “hearing before a properly appointed” official. *Id.*, at 183, 188. In this case, that official cannot be Judge Elliot, even if he has by now received a constitutional appointment. Having already both heard Lucia’s case and issued an initial decision on the merits, he cannot be expected to consider the matter as though he had not adjudicated it before. To cure the constitutional error, another ALJ (or the Commission itself) must hold the new hearing. Pp. 12–13.

868 F. 3d 1021, reversed and remanded.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, ALITO, and GORSUCH, JJ., joined. THOMAS, J., filed a concurring opinion, in which GORSUCH, J., joined. BREYER, J., filed an opinion concurring in the judgment in part and dissenting in part, in which GINSBURG and SOTOMAYOR, JJ., joined as to Part III. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG, J., joined.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 17–130

RAYMOND J. LUCIA, ET AL., PETITIONERS *v.*
SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[June 21, 2018]

JUSTICE KAGAN delivered the opinion of the Court.

The Appointments Clause of the Constitution lays out the permissible methods of appointing “Officers of the United States,” a class of government officials distinct from mere employees. Art. II, §2, cl. 2. This case requires us to decide whether administrative law judges (ALJs) of the Securities and Exchange Commission (SEC or Commission) qualify as such “Officers.” In keeping with *Freytag v. Commissioner*, 501 U. S. 868 (1991), we hold that they do.

I

The SEC has statutory authority to enforce the nation’s securities laws. One way it can do so is by instituting an administrative proceeding against an alleged wrongdoer. By law, the Commission may itself preside over such a proceeding. See 17 CFR §201.110 (2017). But the Commission also may, and typically does, delegate that task to an ALJ. See *ibid.*; 15 U. S. C. §78d–1(a). The SEC currently has five ALJs. Other staff members, rather than the Commission proper, selected them all. See App. to Pet. for Cert. 295a–297a.

Opinion of the Court

An ALJ assigned to hear an SEC enforcement action has extensive powers—the “authority to do all things necessary and appropriate to discharge his or her duties” and ensure a “fair and orderly” adversarial proceeding. §§201.111, 200.14(a). Those powers “include, but are not limited to,” supervising discovery; issuing, revoking, or modifying subpoenas; deciding motions; ruling on the admissibility of evidence; administering oaths; hearing and examining witnesses; generally “[r]egulating the course of” the proceeding and the “conduct of the parties and their counsel”; and imposing sanctions for “[c]ontemptuous conduct” or violations of procedural requirements. §§201.111, 201.180; see §§200.14(a), 201.230. As that list suggests, an SEC ALJ exercises authority “comparable to” that of a federal district judge conducting a bench trial. *Butz v. Economou*, 438 U. S. 478, 513 (1978).

After a hearing ends, the ALJ issues an “initial decision.” §201.360(a)(1). That decision must set out “findings and conclusions” about all “material issues of fact [and] law”; it also must include the “appropriate order, sanction, relief, or denial thereof.” §201.360(b). The Commission can then review the ALJ’s decision, either upon request or *sua sponte*. See §201.360(d)(1). But if it opts against review, the Commission “issue[s] an order that the [ALJ’s] decision has become final.” §201.360(d)(2). At that point, the initial decision is “deemed the action of the Commission.” §78d–1(c).

This case began when the SEC instituted an administrative proceeding against petitioner Raymond Lucia and his investment company. Lucia marketed a retirement savings strategy called “Buckets of Money.” In the SEC’s view, Lucia used misleading slideshow presentations to deceive prospective clients. The SEC charged Lucia under the Investment Advisers Act, §80b–1 *et seq.*, and assigned ALJ Cameron Elliot to adjudicate the case. After nine

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