

Supreme Court Expands the Path to Challenge the Authority of Administrative Agencies in Federal Court

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Consistent with federal courts' recent pattern of limiting the reach of administrative agencies, the Supreme Court held on April 14, 2023, that a challenge to the constitutional authority of an administrative law judge ("ALJ") in administrative proceedings involving the FTC and SEC can be heard by a federal court without first being adjudicated through the administrative process. This case, *Axon Enterprise Inc. v. Federal Trade Commission, et. al.* [1], significantly deviates from the typical rule requiring strict compliance with an administrative process *before* an issue can be taken to federal court.

Axon consolidated two cases that presented the same legal issues. The petitioners were subject to an investigation and hearing from the SEC and FTC, respectively. Before the administrative processes were complete, both of the petitioners challenged the constitutionality of the proceedings in federal court under the separation of powers doctrine. The question before the Supreme Court was who should hear the challenge. The SEC and FTC argued that the challenge must first be heard before the ALJ, in accordance with the statutory schemes. The petitioners argued they should be able to bring their challenges directly to federal court.

The Supreme Court unanimously agreed with the petitioners. First, it held that requiring the petitioners to bring their challenges before an ALJ first would "foreclose all meaningful judicial review." "The harm [the petitioners] allege is 'being subjected' to 'unconstitutional agency authority'—'a proceeding by an unaccountable ALJ.'" If the petitioners were forced to complete the administrative process first, they will have sustained the alleged harm by the time they could bring the issue before the federal court, making the harm not redressable. Second, the Court held that the constitutional challenges were "wholly collateral to" the respective statutory schemes because the petitioners were challenging the underlying constitutionality of the administrative process, not any particular action taken by the federal agency. Finally, the Court held that the challenges were "outside the agency's expertise" because neither the FTC nor the SEC were experts in resolving constitutional disputes over separation of powers.

The decision in *Axon* potentially allows parties to administrative proceedings to circumvent or delay the administrative process by challenging the underlying constitutionality of the proceedings in federal court. *Axon's* holding may be expanded further in the future, as both Supreme Court justices Clarence Thomas and Neil Gorsuch stated that they believe that *any* constitutional challenge to an administrative adjudication *must* be heard by a federal court.

If you have any questions about *Axon* or would like guidance on other matters involving investigations or hearings by federal agencies, contact your Miller Canfield attorney or the authors of this article.

[1] 598 US ____ (2023)