

## Securities And Exchange Commission Administrative Law Judges Are Officers Of The United States Under Appointments Clause

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The Constitution's Appointments Clause sets forth certain requirements for appointing Officers of the United States, who are more than mere employees of the federal government. The Securities and Exchange Commission (SEC) utilizes Administrative Law Judges (ALJ) to adjudicate administrative proceedings involving violations of securities laws. Those ALJs are not appointed in accordance with the Appointments Clause. When Raymond Lucia was charged with violating securities laws and an ALJ was assigned to adjudicate his case, he argued that the proceeding was invalid because the ALJ was an Officer that was not properly appointed. The D.C. Circuit rejected Lucia's argument, but the Court, in a 6-3 decision by Justice Kagan, reversed, holding that SEC ALJs had equivalent powers and duties as the special trial judges the Court had previously held were Officers in *Freytag v. Commissioner*, 501 U.S. 868 (1991). Since the ALJ in this case was an Officer, but not appointed in accordance with the Appointments Clause, the case was remanded for a hearing before a properly appointed ALJ other than the one who already heard the case. Justice Thomas, joined by Justice Gorsuch, filed a concurrence, noting that while the SEC ALJs met the standards of *Freytag*, the Court's precedents still have not established what standards are necessary to establish someone as an Officer of the United States. Justice Breyer concurred in part and dissented in part, agreeing that the ALJ was not properly appointed on statutory grounds, but was joined by Justices Ginsburg and Sotomayor in arguing that the case could be remanded to the same ALJ. Justice Sotomayor, joined by Justice Ginsburg, filed a dissent, arguing that an Officer should be someone who could make decisions binding the government, instead of issuing advisory opinions, and SEC ALJs lack that final decision making authority. A link to the opinion in *Lucia v. Securities and Exchange Commission* is [here](#).

**TAGGED:** Securities And Exchange Commission, Administrative Law Judges, Officers Of The United States, Appointments Clause, *Freytag v. Commissioner*, *Lucia v. Securities and Exchanges Commission*