Can Congress Create an "Independent" Board Under the Independent SEC to Regulate Public Accounting Firms?

CASE AT A GLANCE

In the Sarbanes-Oxley Act of 2002, Congress created the Public Company Accounting Oversight Board (PCAOB)—a board whose members may be terminated only for cause—and authorized it to regulate public accounting firms under the control of the independent Securities and Exchange Commission. Plaintiffs challenged the PCAOB as violating separation-of-powers principles and the Appointments Clause in Article II of the Constitution. The lower courts held that the PCAOB violated neither separation of powers nor the Appointments Clause and upheld the PCAOB.

Free Enterprise Fund et al. v. Public Company Accounting Oversight Board et al.
Docket No. 08-861

Argument Date: December 7, 2009
From: The District of Columbia Circuit

by Steven D. Schwinn
John Marshall Law School

The Sarbanes-Oxley Act of 2002 created the Public Company Accounting Oversight Board (PCAOB) to regulate public accounting firms in the wake of the Enron and Worldcom accounting scandals. Congress placed the PCAOB under the control of the Securities and Exchange Commission (SEC), itself an independent agency, and protected PCAOB members from removal by the SEC except "for cause" (and not "at will").

The plaintiffs challenged the PCAOB, arguing that it infringed on the President's executive power by insulating PCAOB members from direct presidential control and removal. The plaintiffs also argued that the Appointments Clause prohibited Congress from vesting the appointment of PCAOB members in the already independent SEC.

ISSUES

Does Sarbanes-Oxley violate constitutional separation of powers by vesting members of the PCAOB with regulatory authority, under the control of the SEC, while also protecting them from all but for-cause termination by the SEC?

Does the Sarbanes-Oxley Act violate the Appointments Clause by vesting the appointment of PCAOB members in the SEC, itself an independent agency?

FACTS

In 2002, in the wake of the Enron and Worldcom accounting scandals, Congress enacted the Sarbanes-Oxley Act to tighten federal regulation of U.S. securities markets. In particular, Congress sought to address the inadequate auditing system of public accounting firms—a system based on peer review of one accounting firm by another under the direction of a weak Public Oversight Board that was funded by the very accounting profession that it regulated.

Congress's answer was the PCAOB (sometimes pronounced "peek-a-boo"). The PCAOB is a five-member regulatory body appointed by the SEC and charged with "oversee[ing] the audit of public companies that are subject to the securities laws." 15 U.S.C. § 7211(a). It has four principal powers: to register public accounting firms; to establish rules for audit reports; to conduct inspections and investigations of the firms; and, when appropriate, to initiate disciplinary procedures, including sanctions.

In exercising these powers, the PCAOB is subject to broad SEC oversight and control. (The PCAOB is subject to much the same kind of SEC oversight as self-regulatory organizations—the National Association of Securities Dealers and the New York Stock Exchange, e.g.—upon which the PCAOB was modeled.) Thus, the SEC must approve any proposed PCAOB rule before it can go into effect, and the SEC can modify or delete any PCAOB rule as it wishes. The PCAOB must comply with its SEC-approved rules, notify the SEC of any investigations of potential violations, and coordinate with the SEC. PCAOB sanctions are automatically stayed upon an application for SEC review or upon SEC's *sua sponte* initiation of review. The SEC reviews de novo all PCAOB sanctions and may alter them. And finally, the SEC may rescind, in whole or in part, any aspect of the PCAOB's enforcement authority at any time in order to protect the public and promote the purposes of Sarbanes-Oxley.

While the PCAOB is subject to SEC control in these ways, it also enjoys an important measure of independence from the SEC in the form of for-cause removal. The SEC can remove a PCAOB member only after notice and hearing and only if the member "willfully violated any provision of the [Sarbanes-Oxley Act], the rules of the [PCAOB], or the securities laws"; "willfully abused [his] authority"; or "without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard."

This for-cause removal requirement makes the PCAOB something of an unusual animal: Its members are insulated from removal except for cause by another agency, the SEC, whose members themselves are insulated from removal except for cause. (Plaintiffs call this "double for-cause" removal, because the president can effect the termination of PCAOB members only by firing SEC members (for cause) for not firing PCAOB members (for cause) in the first place.) But more: PCAOB members were appointed by the full independent SEC in the first place.

These unusual features caught the attention of the Free Enterprise Fund, a nonprofit public interest organization that "promotes economic growth, lower taxes, and limited government," and one of its members, Beckstead and Watts, LLP, and they brought suit. (Beckstead and Watts was at the time subject to an ongoing PCAOB investigation.) The plaintiffs lodged a "facial challenge" against the PCAOB in the United States District Court for the District of Columbia, arguing that it was unconstitutional in all circumstances. The plaintiffs alleged that the "double for-cause" insulation for PCAOB members violated separation of powers principles because it interfered with an essential component of the president's ability to execute the laws—the power to fire PCAOB members. The plaintiffs also alleged that SEC appointment of PCAOB members violated the Appointments Clause, because the SEC lacks constitutional authority to appoint members who wield the significant and independent power of the PCAOB. They argued that PCAOB members are principal officers who can be appointed only by the president under the Appointments Clause. And they argued that even if PCAOB members are inferior officers, their appointment by the SEC ran afoul of the clause because the SEC is not a "department" and that the full SEC is not its "head."

The plaintiffs, however, faced a significant hurdle before getting to the merits. Sarbanes-Oxley requires certain internal, administrative review procedures for parties aggrieved by actions of the PCAOB. These procedures, designed for self-regulatory organizations, give the SEC an opportunity to address legal claims in an authoritative ruling before an aggrieved party files in court. But the plaintiffs here failed to pursue their case at the SEC, thus giving the PCAOB a strong claim that the court lacked jurisdiction.

There was a second hurdle. Because the plaintiffs had lodged a facial challenge, they had to demonstrate that the PCAOB structure was unconstitutional in every possible application—that it simply could not operate without violating separation of powers and the Appointments Clause. Plaintiffs who lodge this kind of challenge (as opposed to an "as applied" challenge) always face a significant hurdle in showing that an act is unconstitutional in every application. But here the hurdle was even higher since the plaintiffs could not know precisely how the SEC related to the PCAOB—the crux of their case—because they did not await the final agency action under the Sarbanes-Oxley. Their arguments, therefore, were based upon how the SEC *might* relate to the act, not on how the SEC *did* relate to it.

The district court ruled on March 21, 2007, that the plaintiffs had cleared the first hurdle, but not the second one. Judge Robertson wrote in a short, unpublished opinion that the court had jurisdiction, notwithstanding the plaintiffs' failure to pursue the requisite remedies within the SEC. But he also wrote that the plaintiffs failed to meet their burden in showing that the PCAOB was in every application unconstitutional. As to the separation of powers claim, Judge Robertson wrote that the PCAOB's for-cause removal standard did not unduly interfere with the president's authority to execute the laws "because SEC Commissioners can be removed by the President for cause … and PCAOB members can be removed by the SEC 'for good cause shown.'" As to the Appointments Clause, Judge Robertson wrote that the SEC had authority under the clause to appoint the PCAOB. The court granted summary judgment for the PCAOB, concluding that the plaintiffs simply could not mount a successful facial challenge with no concrete showing of how the SEC and PCAOB relate to each other: "The plaintiffs have brought a facial challenge to the PCAOB, presenting nothing but an hypothetical scenario of an overzealous or rogue PCAOB investigator. They have not responded to the defendants' arguments that, if such a scenario became real, the SEC could change the rules to prevent improper investigations or remove PCAOB members for 'good cause.'"

A divided three-judge panel of the D.C. Circuit affirmed Judge Robertson's ruling. In a much lengthier opinion, the circuit court's Judge Rogers came to the same basic conclusions as the district court had: The plaintiffs' failure to pursue administrative remedies within the SEC before filing in court was not fatal to their claim; the PCAOB and its for-cause removal did not unduly interfere with the president's executive power under well-settled Supreme Court precedent; and the full SEC had authority to appoint the PCAOB under Sarbanes-Oxley and the Appointments Clause. Judge Rogers concluded that the PCAOB fell squarely within established Supreme Court precedent on separation of powers and the Appointments Clause. *Free Enterprise Fund v. Pub. Co. Accounting Oversight Board,* 537 F.3d 667 (D.C. Cir. 2008).

Judge Kavanaugh issued a sharp dissent. Focusing especially on the double for-cause removal, he argued that the PCAOB structure prevented the president from exercising executive power and thus violated separation-of-powers principles: "This structure effectively eliminates any Presidential power to control the PCAOB, notwithstanding that the Board performs numerous regulatory and law-enforcement functions at the core of the executive power." *Free Enterprise Fund v. Pub. Co. Accounting Oversight Board,* 537 F.3d 667, 686 (D.C. Cir. 2008). Consistent with the president's executive authority, Judge Kavanaugh argued, the president or his "alter ego," that is, a principal officer appointed by the president and removable at will, must have the power to terminate an officer protected by for-cause removal. Moreover, the PCAOB's extraordinary and independent power—as evidenced, again, by its members' for-cause removal—meant that the PCAOB itself was an independent agency, and its members were principal officers, requiring appointment by the President, not the SEC, under the Appointments Clause.

The primary difference between the two opinions is their emphasis on double for-cause removal and what that means for status and control of PCAOB members. Judge Rogers considered the double for-cause removal as well as the other features of the relationship between the SEC and the PCAOB and concluded that the SEC's extraordinary control over the PCAOB allows the president sufficient, even if not absolute, executive control (through the SEC). Judge Kavanaugh, in contrast, focused more intensely on the double for-cause removal and argued that this alone meant that the president lacked control over the PCAOB.

Reflecting the division on the panel, the full D.C. Circuit on November 17, 2008, rejected the plaintiffs' petition for an en banc hearing by a 5-4 vote, and the Supreme Court granted certiorari on May 18, 2009.

CASE ANALYSIS

The plaintiffs, the PCAOB, and the government all filed briefs in the case. While they all spend most of their time arguing about the separation of powers and Appointments Clause issues, the jurisdictional question—whether the district court lacks jurisdiction because the plaintiffs failed to pursue remedies within the SEC before filing in court—is still very much in play. Only the government addresses this issue, however; neither the plaintiffs nor the PCAOB brief it. Other than this point, the PCAOB's arguments overlap considerably with the government's arguments, and are described together, referring to them collectively as "the government."

Separation of Powers

The separation-of-powers principle at issue here relates to congressional interference with the president's executive powers under Article II of the Constitution—particularly, the president's power, as a unitary executive, to direct the executive branch and remove executive officers. The Supreme Court has held that the president's appointment power implies a removal power and that "the president has the exclusive power of removing executive officers of the United States whom he has appointed by and with the advice of the Senate." *Myers v. United States,* 272 U.S. 52 (1926). But the Court has also upheld independent agencies whose members may be terminated by the President only for cause, *Humphrey's Executor v. United States,* 295 U.S. 602 (1935), and an independent counsel who may be terminated by the Attorney General only for cause. *Morrison v. Olson,* 487 U.S. 654 (1988). Thus while a for-cause removal requirement may be a consideration in determining whether Congress interfered with executive power, "the real question is whether the removal restrictions are of such a nature that they impede the president's ability to perform his constitutional duty." *Morrison v. Olson,* 487 U.S. 654, 686 (1988).

The plaintiffs argue under this *Morrison* formulation that the PCAOB unduly interferes with the president's executive authority and thus violates the separation of powers. The plaintiffs argue first that the double for-cause removal requirement for PCAOB members leaves the president with no control or supervision over the PCAOB. Neither the president nor his alter ego has authority to terminate a member at will, and Sarbanes-Oxley has eliminated all other levers of presidential control because he "cannot direct the independent SEC how to exercise the discretionary oversight function (whatever its scope) that Congress assigned to that agency."

The plaintiffs next argue that Congress left itself with even greater control over the PCAOB—a veto power over removal of PCAOB members—than it allowed the president. The plaintiffs argue that if the president sought removal of a PCAOB member, he could order a majority of SEC commissioners to remove the member. If they refuse, and if the President then fires them for cause, Congress could simply refuse to confirm replacements. This refusal, the plaintiffs argue, amounts to a veto power over the president's termination of PCAOB members.

Third, the plaintiffs argue that affirming the PCAOB structure would open the door for Congress to transform any executive department, from the State Department to the Department of Justice, into a Sarbanes-Oxley-like arrangement, in which cabinet secretaries could turn into independent agencies (such as the SEC) and lower-level officials could be transformed into yet further independent boards (such as the PCAOB). This slippery slope would eviscerate the whole of the President's executive authority.

Coming full circle to *Morrison,* the plaintiffs finally argue that the PCAOB violates that case as well. Particularly, the plaintiffs argue that the restrictions on presidential control over the PCAOB far exceed the restrictions on presidential control over the independent counsel that was at issue in *Morrison*. While the plaintiffs point to a handful of different controls over the independent counsel that they argue are absent from the PCAOB, this argument, like the plaintiffs' others on separation of powers, quickly reduces to the plaintiffs' core complaint: The PCAOB's double for-cause insulation completely prevents the President from removing and thus controlling the PCAOB.

In response, the PCAOB and the government both argue that the SEC's extraordinary authority over the PCAOB allows the president to control the PCAOB through the SEC: "For while removal is a 'powerful tool for control' … it is not the only one—and for purposes of assessing the constitutionality of [Sarbanes-Oxley], the critical question is whether the Act, in toto, provides the SEC with the ability to control the Board's activities. If the SEC indeed has such control, then the constitutional validity of the President's relationship with the SEC carries over to the Board as well."

The government first argues that upholding the PCAOB would be merely one insignificant step (at most) away from the Supreme Court's decision upholding independent agencies in *Humphrey's Executor v. United States.* Thus, if the plaintiffs concede that the independent SEC could take on the responsibilities of the PCAOB—which they appear to do, and which *Humphrey's* seems to allow—then there is no constitutional problem in creating the PCAOB as a separate entity and subjecting it to the comprehensive control of the SEC.

Next, the government argues that the Supreme Court has never held that the president must have direct power to remove inferior officers (such as members of the PCAOB). Instead, the removal power follows the appointment power. In this case, that means it follows the SEC, the appointing authority for the PCAOB. Thus, Congress may vest removal power—even if only removal for cause—in the SEC. This is precisely what Sarbanes-Oxley did.

Finally, the government argues that *Morrison* supports the PCAOB. The PCAOB is subject to controls that are very similar to those over the independent counsel in *Morrison*. And there is one control over the PCAOB that goes far above and beyond the controls in *Morrison:* The SEC can rescind any aspect of the PCAOB's authority at any time.

Importantly, neither the plaintiffs nor the government takes aim at the settled cases upholding independent agencies whose members may be terminated by the president only for cause, *Humphrey's Executor v. United States,* 295 U.S. 602 (1935), and upholding the independent counsel who may be terminated by the attorney general only for cause. *Morrison v. Olson,* 487 U.S. 654 (1988). (Some of petitioners' amici do take aim at these cases and argue that they should be overruled.) Instead, the plaintiffs argue that the PCAOB is inconsistent with these precedents—that these cases mean that only the president or his "alter ego" (and not another officer with for-cause protection, such as SEC members) may fire an independent officer. The PCAOB, in contrast, argues that the PCAOB is well within the boundaries set by these cases—that they uphold both independent agencies (such as the SEC) and "for cause" termination protection (such as that afforded the PCAOB). At the end of the day, however, both sides would uphold the Court's core cases on removal and separation of powers.

Appointments Clause

The Appointments Clause provides that the president "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint … Officers of the United States." U.S. Constitution, Article II, Section 2. On the other hand, however, "the Congress may by law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." U.S. Constitution, Article II, Section 2.

Thus, the core issue in this case is whether PCAOB members are principal "officers" to be appointed only by the president (with the advice and consent of the Senate), or whether they are "inferior officers" subject to appointment by a "head of department." If they are principal "officers," they must be appointed by the president with advice and consent of the Senate, and their appointment by the SEC obviously would violate the Appointments Clause.

But the Supreme Court's guidance on the definition of "officer" and "inferior officer" is sparse. The best the Court has done came in 1997 when it declared that an officer is an "inferior officer" if that officer has a superior—if his or her "work is directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate." *Edmond v. United States,* 520 U.S. 651 (1997).

The plaintiffs argue that PCAOB members are principal "officers" (and that their appointment by the SEC violates the Appointments Clause) because the SEC lacks control, in part because of the double for-cause removal requirement. (The arguments here are similar to the arguments over separation of powers—both go to the level of control over the PCAOB.) The plaintiffs argue that the SEC lacks *day-to-day* control and supervision over the PCAOB's regulatory actions *before the fact;* instead, the SEC controls the PCAOB only after the fact, and then only with regard to its judgments. The SEC does not actually control the PCAOB members, as they are protected from termination by the "double for cause" removal requirement. Therefore, PCAOB members are principal officers.

But even if PCAOB members are merely "inferior officers," the plaintiffs argue that their appointment still violates the Appointments Clause. Here, the plaintiffs argue that the SEC is not a "department" for Appointments Clause purposes because it is an independent agency, not directly and immediately accountable to the President. Moreover, the SEC commissioners together cannot be the SEC's "head" under the Appointments Clause because a department "head" can only be a single person, in this instance the SEC chairperson.

In response, the government seeks to show that PCAOB members are "inferior officers" by comparing them to officers in other Appointments Clause cases, including *Edmond v. United States* and *Freytag v. Commissioner.* In those cases, which involved Coast Guard judges and Tax Court judges respectively, the Court held that officers who enjoyed some significant independence were nevertheless "inferior" for Appointments Clause purposes because some subset of the judges' decisions were reviewable. Here, by contrast, the SEC exercises complete review authority over the PCAOB. And, contrary to the plaintiffs' claims, the members' for-cause removal does nothing to curb this authority.

Next, the government argues that the SEC is a "department" under the Appointments Clause and that the full commission (not just the chairperson) is its "head." Therefore, it concludes, Congress may validly vest appointment power in the full SEC. The government argues that the SEC is appointed by the president, with advice and consent of the Senate, and that it is answerable to the president alone. Thus even as an independent agency, the SEC is a "department" under the Appointments Clause. Moreover, the plaintiffs' contrary position would mean that the SEC would lack authority to appoint any inferior officer within the commission, thus reversing a long tradition at the SEC and other non-cabinet and independent agencies.

Finally, the government argues that the full Commission can be its "head" within the meaning of the Appointments Clause. This understanding is much more natural than treating a single person as an agency's head when Congress has not vested that single person with the agency's final decision-making authority. The government draws on the Ninth Circuit's 1991 case *Silver v. Postal Service,* 951 F.2d 1033, to support this argument. (The Ninth Circuit is the highest court to rule squarely on the issue.)

As with the separation-of-powers arguments, neither party advocates overturning any Supreme Court case on the Appointments Clause. Instead, the parties merely take a different view as to what the cases say. The plaintiffs again emphasize the PCAOB's powers and the SEC's lack of control, focusing particularly on the double for-cause removal provision. The government argues that the SEC exerts extraordinary control over the PCAOB and that this places the PCAOB well within settled precedent under the Appointments Clause.

Jurisdiction

The jurisdictional question in the case is whether the plaintiffs may take their case to court at all, given that they bypassed the exclusive administrative channels designed to deal with their complaints. The plaintiffs do not offer any arguments on the jurisdiction issue. They rely, presumably, on the lower courts' analysis upholding jurisdiction, based on those courts' conclusions that the plaintiffs' constitutional claims are collateral to Sarbanes-Oxley's administrative remedies.

The government (but here not the PCAOB) argues that the plaintiffs are not exempt from these administrative requirements just because they are challenging the PCAOB under the Constitution. Moreover, they contend, these requirements serve an important practical purpose in this very case: They would give the SEC a chance to interpret

Sarbanes-Oxley in a way that would avoid the problems that the plaintiffs, by necessity, hypothesize.

In other words, the plaintiffs' move to bypass the administrative review procedures, combined with their facial attack on Sarbanes-Oxley, meant that the plaintiffs challenged the PCAOB based solely on the way the SEC *might* relate to the PCAOB under the Sarbanes-Oxley—not the way the SEC *did,* or even *would,* relate to the PCAOB under the act. If the plaintiffs had first awaited PCAOB final action in the investigation of Beckstead and Watts and then pursued administrative appeals of that action, they could have attacked the Sarbanes-Oxley as it *actually* operated, not as they hypothesized that it *could* operate, and thus would have put their constitutional challenge in a much different (less favorable) light.

SIGNIFICANCE

The possible implications of this case run from the pedestrian to the revolutionary. Let's start with the pedestrian.

The simplest result would be a routine dismissal based on the plaintiffs' failure to exhaust their administrative remedies. Because the plaintiffs bypassed the administrative review procedures, and because they lodged a facial attack on Sarbanes-Oxley in the first instance in federal court, they necessarily can argue only how little control the SEC *might* have over the PCAOB—not how little control the SEC actually *did* or *does* have over the PCAOB. This puts the plaintiffs in a tough spot, particularly with the Court tightening its review of facial challenges: Rather than showing that Sarbanes-Oxley is unconstitutional in every possible case (as required for a facial challenge)—or even in *their case*—the plaintiffs can only show that it is unconstitutional under their assumptions. The easiest result for the Court—the one that could avoid any significant constitutional question—would be to dismiss the case based on the plaintiffs' failure to exhaust their administrative remedies so as to present an actual rather than theorized constitutional problem.

More significantly, the Court could overturn this particular arrangement between the SEC and the PCAOB based on either separation-of-powers principles or the Appointments Clause, but nevertheless uphold its long line of cases authorizing independent agencies and the appointment of inferior officers with some substantial independence. (This approach—holding that the PCAOB simply pushes the precedent too far—is broadly consistent with the plaintiffs' arguments and Judge Kavanaugh's dissent at the circuit court.) This kind of result would slow or even reverse the long-term trend in the Court's jurisprudence of expanding space for congressionally authorized independent actors within the executive branch, and it would draw a clear line indicating where Congress simply goes too far.

Such a ruling could have even greater significance if the Court were to base it narrowly on the "double for-cause" protection enjoyed by PCAOB members. (This is the precise approach taken by the plaintiffs and Judge Kavanaugh.) A ruling such as this could foreclose heads of independent agencies from appointing officers that could be terminated only for cause and only by the agency head. (Such a ruling would not prevent Congress from authorizing an official with for-cause removal at an independent agency if the official could be removed by the president or his "alter ego.") This would restrict Congress in providing for a measure of independence for officers *within* already independent agencies. It could also privilege for-cause termination as a factor in the separation of powers calculus or the Appointments Clause analysis, significantly chipping away at, though not reversing, cases authorizing independent agencies and actors within the executive branch.

If the Court were to rule in this way, the government's position on severability could limit the ruling's impact on Sarbanes-Oxley itself. The government argued that the for-cause removal protection for PCAOB members can be severed from the larger PCAOB structure without damaging it. This means that the Court could overturn this aspect of the PCAOB without undoing the entire PCAOB or the entire Sarbanes-Oxley Act, which might make this approach somewhat more palatable to the Court.

Finally, the case could be revolutionary. Some have seen this litigation as a broadside on any independence within the executive branch and a vehicle for affirming an unbridled "unitary executive." (Indeed, attorneys for the plaintiffs and some of their amici are closely associated with the "unitary executive theory"—the idea that the President, and the president alone, must have unfettered control over, and absolute power to remove, the employees in the executive branch in order to fulfill his executive obligations under Article II of the Constitution.) This kind of ruling could overturn settled cases authorizing independent agencies and independent actors within the executive branch—a result that some amici for the plaintiffs advocate. This could also put any independent agency or independent actor within the executive branch in jeopardy, and it would severely restrict Congress's power to impact executive functions.

In so many ways, though, this case is less than an ideal vehicle for making this kind of revolutionary ruling. First, as already noted, there are significant jurisdictional problems with the case. Second, the Court has (and at least stated) preference for avoiding constitutional issues when it can. And last but certainly not least, Sarbanes-Oxley received overwhelming bipartisan support in both houses of Congress and enthusiastic support and praise from President George W. Bush. (Notably, President Bush, who did not shy away from issuing signing statements indicating that portions of legislation interfered with his executive power, was silent upon his signing of the PCAOB, even as he objected to other, unrelated portions of the Sarbanes-Oxley Act.) This kind of strong, bipartisan support for the act from both political branches makes it especially unlikely that the Court would choose this case as the occasion for issuing a revolutionary ruling affecting the separation of power.

Steven D. Schwinn is associate professor of law at the John Marshall Law School and editor of the Constitutional Law Prof Blog. He can be reached at sschwinn@jmls.edu or 312.386.2865.

PREVIEW of United States Supreme Court Cases, pages 116–121.

ATTORNEYS FOR THE PARTIES

For Petitioners Free Enterprise Fund and Beckstead and Watts, LLP (Michael A. Carvin, 202.879.3939)

For Respondent Public Company Accounting Oversight Board et al. (Jeffrey A. Lamken, 202.556.2010)

For Respondent United States (Elena Kagan, 202.514.2217)

AMICUS BRIEFS

In Support of Petitioners Free Enterprise Fund and Beckstead and Watts, LLP

American Civil Rights Union et al. (Peter J. Ferrara, 703.582.8466)

William P. Barr et al. (Helgi C. Walker, 202.719.7000)

Cato Institute et al. (Steffen N. Johnson, 202.282.5000)

Center for Individual Rights (Michael E. Rosman, 202.833.8400)

Coalition for Fair Lumber Imports (Kannon K. Shanmugam, 202.434.5050)

The Claremont Institute Center for Constitutional Jurisprudence (John C. Eastman, 714.628.2500)

Law Professors Stephen Bainbridge et al. (Christopher S. Yoo, 215.746.8772)

Mountain States Legal Foundation (J. Scott Detamore, 303.292.2021)

In Support of Respondents Public Company Accounting Oversight Board et al.

Center for Audit Quality (Douglas R. Cox, 202.955.8500)

Constitutional and Administrative Law Scholars (Caitlin J. Halligan, 212.310.8535)

Council of Institutional Investors et al. (Gregory S. Coleman, 512.533.0150)

Former Chairmen of the Securities and Exchange Commission (Richard H. Pildes, 212.998.6377)

National Association of State Boards of Accountancy (Noel L. Allen, 919.755.0505)