

08-861 FREE ENTERPRISE FUND V. PUBLIC CO. OVERSIGHT BD.

DECISION BELOW:537 F.3d 667

LOWER COURT CASE NUMBER: 07-5127

QUESTIONS PRESENTED:

1. Whether the Sarbanes-Oxley Act of 2002 violates the Constitution's separation of powers by vesting members of the Public Company Accounting Oversight Board ("PCAOB") with far-reaching executive power while completely stripping the President of all authority to appoint or remove those members or otherwise supervise or control their exercise of that power, or whether, as the court of appeals held, the Act is constitutional because Congress can restrict the President's removal authority in any way it "deems best for the public interest."

2. Whether the court of appeals erred in holding that, under the Appointments Clause, PCAOB members are "inferior officers" directed and supervised by the Securities and Exchange Commission ("SEC"), where the SEC lacks any authority to supervise those members personally, to remove the members for any policy-related reason or to influence the members' key investigative functions, merely because the SEC may review some of the members' work product.

3. If PCAOB members are inferior officers, whether the Act's provision for their appointment by the SEC violates the Appointments Clause either because the SEC is not a "Department" under *Freytag v. Commissioner*, 501 U.S. 868 (1991), or because the five commissioners, acting collectively, are not the "Head" of the SEC.

CERT. GRANTED 5/18/2009