



UNITED STATES OF AMERICA
Federal Trade Commission

WASHINGTON, D.C. 20540

¹ H&R Block filed a motion challenging the constitutionality of the FTC’s Administrative Law Judges (ALJs) and seeking to disqualify them from participating in this adjudication.² Specifically, H&R Block charges that Congress has improperly shielded the ALJs from removal by the President, infringing on Article II of the Constitution.³

Despite having had several opportunities to resolve the question, the Supreme Court has not held that the statutory restrictions on removing ALJs are unconstitutional.⁴ Undeterred, Commissioner Ferguson concludes that they are—and that Congress violated the Constitution by placing limits on their removal.

ed on statutory provisions
examined by the Commission

⁶ PCAOB members were protected by “dual for-cause limitations” on their removal: they could only be removed for-cause by the SEC, and SEC Commissioners, in turn, could only be

¹ Complaint, H&R Block, Docket No. 9427 (Feb. 23, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/d09427hrblockadmincomplaintpublic.pdf [hereinafter *Complaint*] at 9.

removed for cause by the President. Closely reviewing the PCAOB's specific authorities and the "highly unusual" removal statute governing its members, the Court held that the PCAOB's removal protections were unconstitutional because "Congress cannot limit the President's authority" by providing "two levels of protection." 796 U.S. 114 (2021).

modern history has a Federal Trade Commissioner gone to such lengths to declare that core institutional features of the FTC are unconstitutional.
