



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

May 19, 2022

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Axon Enterprise, Inc. v. Federal Trade Commission, No. 21-86
Securities and Exchange Commission v. Michelle Cochran, No. 21-1239

Dear Mr. Harris:

We write on behalf of the federal parties (respondents in No. 21-86, *Axon Enterprise, Inc. v. FTC*, and petitioners in No. 21-1239, *SEC v. Cochran*) to propose a coordinated briefing schedule for these cases. Axon Enterprise, Inc. (petitioner in *Axon*) and Michelle Cochran (respondent in *Cochran*) consent to this proposal.

Axon presents the question “[w]hether Congress impliedly stripped federal district courts of jurisdiction over constitutional challenges to the Federal Trade Commission’s structure, procedures, and existence by granting the courts of appeals jurisdiction to ‘affirm, enforce, modify, or set aside’ the Commission’s cease-and-desist orders.” 21-86 Pet. i. *Cochran* presents the question “[w]hether a federal district court has jurisdiction to hear a suit in which the respondent in an ongoing Securities and Exchange Commission administrative proceeding seeks to enjoin that proceeding, based on an alleged constitutional defect in the statutory provisions that govern the removal of the administrative law judge who will conduct the proceeding.” 21-1239 Pet. I. All the parties agree that, while there are differences in the relevant statutory texts, the two cases substantially overlap.

In *Axon*, Axon filed its opening brief on May 9, 2022, and the federal parties’ brief is due August 8, 2022. In *Cochran*, the federal parties’ opening brief is currently due June 30, 2022, and Cochran’s brief is currently due August 1, 2022. Under that briefing schedule, the federal parties would be required to address overlapping questions across three different briefs (one brief as respondent in *Axon* and two as petitioner in *Cochran*) due on three different days. In addition, amici curiae briefs would be due on disparate dates in each case.

To coordinate the briefing schedules and minimize duplicative briefing, we respectfully request that (1) the parties in *Cochran* be realigned, so that the federal parties are treated as respondents and Cochran is treated as petitioner; (2) Cochran’s opening brief and joint appendix

(or motion to dispense with the joint appendix) in that case be due June 30, 2022; (3) the federal parties' brief in that case be due August 8, 2022; and (4) the federal parties be allowed, in lieu of filing separate briefs in *Cochran* and *Axon*, to file a single, consolidated brief of 20,000 words across both cases.

This Court has on occasion realigned parties to ensure that the same party is not treated as petitioner in one case and respondent in another, overlapping case. See, e.g., No. 19-508, *AMG Capital Management, LLC v. FTC*, and No. 19-825, *FTC v. Credit Bureau Center* (realigning parties so that the FTC was treated as respondent in both cases). In addition, this Court has on multiple occasions granted leave to a party to file a consolidated brief across two overlapping cases. See, e.g., No. 21-463, *Whole Woman's Health v. Jackson*, and No. 21-588, *United States v. Texas* (granting a party leave to file a consolidated brief of up to 20,000 words); No. 20-1199, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, and No. 21-707, *Students for Fair Admissions, Inc. v. University of North Carolina* (granting a party leave to file a consolidated brief of up to 20,000 words); No. 21-1086, *Merrill v. Milligan*, and No. 21-1087, *Merrill v. Caster* (granting a party leave to file a consolidated brief of up to 18,000 words).

Although we propose coordinating the briefing schedules as set forth above, all parties agree that *Axon* and *Cochran* should be argued separately. See *Jackson, supra* (No. 21-463) and *Texas, supra* (No. 21-588) (allowing a party to file a consolidated brief across both cases but holding a separate argument in each case). Although the questions in both cases overlap in a general sense, as the questions presented underscore, each case arises under a different statute and ultimately presents a distinct question that would benefit from separate arguments.

Sincerely,

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Solicitor General

cc: See Attached Service List

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