

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BUSINESS ROUNDTABLE and
CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,

Petitioners,

v.

UNITED STATES
SECURITIES AND
EXCHANGE COMMISSION,

Respondent.

ON PETITION FOR REVIEW

Case No. 10-1305

PETITIONERS' STATEMENT OF ISSUES

Pursuant to the Clerk's Order of October 5, 2010, petitioners Business Roundtable and Chamber of Commerce of the United States of America file this preliminary Statement of Issues:

1. Whether the Commission's adoption of the proxy access rules—which require public companies in certain circumstances to include shareholder nominees for director in the company's proxy materials—was arbitrary and capricious, an abuse of discretion, and otherwise unlawful within the meaning of the Administrative Procedure Act (“APA”) because the Commission failed to adequately consider and address rulemaking comments, empirical evidence in the record, and alternatives to the rules that were adopted.

2. Whether the Commission's adoption of the rules, which conflict with state laws regarding shareholder access to the proxy, was arbitrary and capricious, an abuse of discretion, and otherwise unlawful within the meaning of the APA, given the Commission's stated goal of effectuating state law.

3. Whether the Commission's adoption of the rules, which bar the holders of a majority of shares in a company from establishing more restrictive requirements for including shareholder nominees in the company proxy, was arbitrary and capricious, an abuse of discretion, and otherwise unlawful within the meaning of the APA, given the Commission's stated goal of empowering shareholders to make significant decisions, and given that the rules permit shareholders to establish *less* restrictive requirements for including shareholder nominees.

4. Whether the Commission, by repeatedly failing to address empirical data and other rulemaking evidence regarding the costs for public companies and their shareholders of the proxy access rules, violated the Securities Exchange Act of 1934 and the Investment Company Act of 1940, 15 U.S.C. §§ 78c(f), 78w(a)(2), 80a-2(c), by failing to discharge its statutory obligation to consider whether the new rules would "promote efficiency, competition, and capital formation."

5. Whether the Commission acted in a manner that was arbitrary and capricious, an abuse of discretion, and otherwise unlawful within the meaning of the APA when it imposed the proxy access rules on investment companies, given the

differences in the structure and operation of investment companies and operating companies, and given that investment companies are subject to a range of different legal requirements.

6. Whether the proxy access rules violate the First, Fifth, and Fourteenth Amendments to the United States Constitution because they compel companies to fund and carry election-related speech by third parties.

Dated: November 4, 2010

Respectfully submitted,

Of Counsel:
Robin S. Conrad
National Chamber Litigation
Center, Inc.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

*Counsel for Petitioner Chamber of
Commerce of the United States of
America*

/s/ Eugene Scalia
Eugene Scalia
Counsel of Record
Daniel J. Davis
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
Telephone: (202) 955-8500
Facsimile: (202) 467-0539

Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2010, I electronically filed the foregoing Petitioners' Statement of Issues with the Clerk of Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system.

Service was accomplished on the following by the CM/ECF system:

Michael A. Conley
ConleyM@sec.gov
Randall W. Quinn
quinnr@sec.gov
Michael L. Post
postm@sec.gov
Tracey A. Hardin
hardint@sec.gov
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

/s/ Eugene Scalia
Eugene Scalia
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 955-8500
EScalia@gibsondunn.com