

October 17, 2017

VIA HAND DELIVERY

Scott S. Harris, Esq.
Clerk of the Court
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

Re: *Raymond J. Lucia and Raymond J. Lucia Co., Inc. v. SEC*, 17-130

Dear Mr. Harris:

Petitioners understand that the Solicitor General intends to seek a third extension of time, to and including November 15, 2017, within which to respond to the petition for a writ of certiorari in the above-referenced case. While petitioners do not oppose that request, we would oppose any additional extensions and, in the meantime, respectfully request that this petition be linked with the petition in *SEC v. Bandimere*, No. 17-475, which presents the same question—*i.e.*, whether SEC Administrative Law Judges are Officers of the United States under the Appointments Clause.

No additional extensions beyond November 15 would be welcome. This petition has been pending since July 21, 2017, and the government has had ample time to formulate and articulate its positions. Indeed, the Solicitor General has already advised the Court that the question presented in this case “warrants review” *and* that this case presents the best vehicle for resolving that question. Pet. 9, *SEC v. Bandimere*, No. 17-475 (U.S. Sept. 29, 2017) (seeking hold “pending [the Court’s] consideration of the petition in *Lucia*”).

Mr. Lucia would be prejudiced by additional delay beyond November 15. He has been under a permanent bar order since September 13, 2015, which makes it impossible for him to work in his chosen profession. He has been driven to the brink of bankruptcy by the SEC’s enforcement action and sanctions. On the current schedule, including the Solicitor General’s most recent extension request, the case could be granted, briefed, argued, and decided in the current Term. A further extension beyond November 15, by contrast, could delay resolution of the issue until next Term.

The *Lucia* and *Bandimere* petitions also should be linked for distribution to Chambers and consideration by the Court. The *Bandimere* petition has now leap-frogged *Lucia*—the

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opposition in that case was filed on October 10, 2017, even though the petition was filed months after the petition here. Although the government is the petitioner in *Bandimere*, it agrees that this case is the better vehicle for resolving the Appointments Clause question because of the significant possibility that Justice Gorsuch would be recused in *Bandimere*. Because the two petitions raise the same issue, and there are potential vehicle problems with *Bandimere*, the petitions should be distributed on the same schedule and considered together at the same Conference.

In sum, the *Lucia* petitioners respectfully submit that the Solicitor General should be required to respond to the petition for a writ of certiorari on or before November 15, 2017, and that the *Lucia* and *Bandimere* petitions should be linked for simultaneous distribution to and consideration by the Court.

Respectfully submitted,


Mark A. Perry

cc: Noel Francisco, Solicitor General