

THE BOND BUYER

Friday, March 20, 2015 | as of 4:47 PM ET

Enforcement

Ex-Miami Official Seeks Supreme Court Review

by [Kyle Glazier](#)

MAR 18, 2015 1:44pm ET

WASHINGTON - Former Miami budget director Michael Boudreaux wants the U.S. Supreme Court to grant him immunity from a Securities and Exchange Commission lawsuit that has attracted a lot of attention from issuer officials and attorneys.

Boudreaux's attorneys, led by Benedict Kuehne, filed a petition for a writ of certiorari with the clerk of the Supreme Court on Tuesday.

The nation's highest court is Boudreaux's last chance to avoid being tried for his alleged role in what the SEC has alleged was a fraudulent 2009 bond offering. The commission is seeking civil penalties against the former budget director. The U.S. Court of Appeals for the Eleventh Circuit in Atlanta, which ruled against him, decided in January to grant Boudreaux until March 17 to ask the Supreme Court to take up the case.

Boudreaux's attorneys say that he is entitled to "qualified immunity" from the 2013 lawsuit, which charges both he and Miami with making "numerous material misrepresentations and omissions to investors." The case is being heard in U.S. District Court for the Southern District of Florida, but has been on pause more than a year because of Boudreaux's argument that he is immune.

The legal concept of qualified immunity protects government officials performing discretionary functions when their actions do not clearly violate someone's established statutory or constitutional rights. The district court dismissed Boudreaux's argument, saying the SEC is seeking monetary penalties that would be paid to the U.S. Treasury rather than traditional civil damages, and the appeals court declined to overturn the lower court's decision.

The International Municipal Lawyers Association filed an unsuccessful friend-of-the-court brief in November asking the appeals court to reconsider its decision. IMLA warned that municipalities would struggle to recruit and retain qualified finance people if it becomes clear that their normal government functions could leave them open to lawsuits. The SEC has recently emphasized holding municipal officials accountable for their roles, and has also charged issuer officials in Allen Park, Mich. and Harvey, Ill. in recent months.

Mitchell Herr, a partner at Holland & Knight in Miami and a former SEC enforcement lawyer there, said the Supreme Court is unlikely to grant cert and hear Boudreaux's case.

"Typically, the Supreme Court grants certiorari when there is a decisional split among the circuit courts of appeal," Herr said. "A split has not yet emerged because this is the first decision on the question of whether a municipal official has a qualified immunity from an SEC enforcement action for actions taken within the scope of his employment. The issue, however, is becoming increasingly important as the SEC is more frequently seeking to hold municipal issuers liable. It remains to be seen whether a split of authority between the circuits will emerge. If it does, then I would expect the Supreme Court to be amenable to taking up this issue." -30--



© 2015 [SourceMedia](#). All rights reserved.