Nos. 19-1434, 19-1458

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,
v.
ARTHREX, INC., ET AL.,
Respondents.

ARTHREX, INC.,
Petitioner,
v.
SMITH & NEPHEW, INC., ET AL.,
Respondents.

On Petitions For Writs Of Certiorari To The United States Court Of Appeals For The Federal Circuit

BRIEF FOR RESPONDENTS SMITH & NEPHEW, INC. AND ARTHROCARE CORP.

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QUESTIONS PRESENTED

The questions presented in *United States* v. *Arthrex, Inc.*, No. 19-1434, are:

1. Whether, for purposes of the Appointments Clause, U.S. Const. art. II, § 2, cl. 2, administrative patent judges of the U.S. Patent and Trademark Office are principal officers who must be appointed by the President with the Senate's advice and consent, or "inferior Officers" whose appointment Congress has permissibly vested in a department head.

2. Whether the court of appeals erred by adjudicating an Appointments Clause challenge brought by a litigant that had not presented the challenge to the agency.

The questions presented in *Arthrex, Inc.* v. *Smith & Nephew, Inc.*, No. 19-1458, are:

1. Whether the court of appeals' severance remedy is consistent with congressional intent.

2. Whether the court of appeals correctly held that the elimination of APJ tenure protections was sufficient to render APJs inferior officers.

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, respondents Smith & Nephew, Inc. and ArthroCare Corp. state that Smith & Nephew PLC is respondents' parent corporation and no other publicly held corporation owns 10% or more of the stock of either respondent.

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