

Nos. 19-1434, 19-1452, 19-1458

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

ARTHREX, INC., *et al.*,
Respondents.

**On Writs of Certiorari to
the U.S. Court of Appeals
for the Federal Circuit**

**BRIEF OF THE NEW CIVIL LIBERTIES ALLIANCE
AS *AMICUS CURIAE* URGING REVERSAL IN PART AND
SUPPORTING RESPONDENTS IN 19-1434 AND 19-1452**

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December 30, 2020

SMITH & NEPHEW, INC., *et al.*,
Petitioners,

v.

ARTHREX, INC.,
Respondent.

ARTHREX, INC.,
Petitioner,

v.

SMITH & NEPHEW, INC., *et al.*,
Respondent.

QUESTIONS PRESENTED

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, if administrative patent judges are principal officers, the court of appeals properly cured any Appointments Clause defect in the current statutory scheme prospectively by severing the application of 5 U.S.C. § 7513(a) to those judges.

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