

WEIL'S SCOTUS TERM IN REVIEW

June 27, 2024

Supreme Court Holds Key SEC Enforcement Power Unconstitutional

By Mark A. Perry, Zack Tripp, Josh
Wesneski and Mark Pinkert

The Supreme Court issued an important decision today in *SEC v. Jarkesy*, holding that the Securities and Exchange Commission (“SEC”) cannot pursue civil penalties for securities fraud claims in the SEC’s own in-house courts because the defendant has a right to a jury trial over such claims. The decision limits the SEC’s enforcement power in key ways and could have significant consequences for other administrative agencies.

Under the federal securities laws, the SEC has the option to bring an enforcement action against a defendant either by filing a lawsuit in federal court or by initiating an administrative enforcement proceeding in-house and in front of the SEC’s own Administrative Law Judge (“ALJ”). Before 2010, the SEC could pursue only injunctive relief against individual defendants in its home forum, and seek civil penalties only in federal court. But in the Dodd-Frank Act of 2010, Congress gave the SEC the additional power to seek civil penalties in agency proceedings.

In a 6-3 opinion issued today, the Court held that the Seventh Amendment’s right to a jury trial for “suits at common law” prevents the SEC from seeking civil penalties for securities fraud claims before in-house agency courts, where there are no juries. Writing for the majority, Chief Justice Roberts first reasoned that the Seventh Amendment’s jury trial right applies to SEC securities fraud claims for civil penalties under the federal securities laws, because of the close relationship between those claims and common law fraud. Second, the Court reasoned that these claims did not fall within the “public rights” exception that allows Congress to redirect certain claims to an agency without a jury. Chief Justice Roberts explained that the determination of whether a claim involves private rights or public rights turns on the “substance of the suit,” and “not where it is brought, who brings it, or how it is labeled.” And in substance, the Court concluded, these were common law fraud claims that must be brought before a jury.

Justice Sotomayor dissented, joined by Justices Kagan and Jackson. Justice Sotomayor urged that the Court's precedents supported Congress's decision to assign adjudication to an agency tribunal, and that the majority's ruling would unleash "chaos" by casting doubt on "more than 200 statutes authorizing dozens of agencies to impose civil penalties for violations of statutory obligations."

In practice, the Court's decision may not have as substantial an effect on the securities industry as it may first appear, because the SEC has already been moving away from filing contested actions in-house in recent years. Nonetheless, *Jarkesy* finally and definitively resolves the question for securities fraud cases seeking civil penalties, and will direct all of those cases to federal court. Perhaps more notable is the potential impact outside of the SEC. As the dissent highlights, the decision will open the door for

challenges to several other agencies' enforcement actions seeking civil penalties, and perhaps encourage those agencies to bring more of their suits in federal court, where defendants have much greater procedural protections and a jury trial right. Finally, the decision may set stronger boundaries around the "public rights" doctrine, thereby limiting Congress's ability to divert certain types of lawsuits to non-Article III courts.

The Court did not, however, resolve several broader challenges to the SEC's authority that the respondent had raised. The respondent brought an Article II challenge to SEC ALJs' insulation from presidential removal and brought a non-delegation doctrine challenge to the SEC's discretion to choose which forum to bring suit. The Court declined to resolve either contention, which could have further restrained the power of the SEC or other agencies.

Weil's SCOTUS Term in Review is published by the Appellate & Strategic Counseling practice of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, +1 212 310 8000, www.weil.com.

If you have questions concerning the contents of this issue, or would like more information about Weil's Appellate & Strategic Counseling practice, please speak to your regular contact at Weil, or to the editors or practice group members listed below:

Practice Co-Heads:

[Mark A. Perry](#)

Appeals & Strategic Counseling
Washington, D.C.
+1 202 682 7511
mark.perry@weil.com

[Greg Silbert](#)

Appeals & Strategic Counseling
New York
+1 212 310 8846
gregory.silbert@weil.com

[Zack Tripp](#)

Appeals & Strategic Counseling
Washington, D.C.
+1 202 682 7220
zack.tripp@weil.com

Authors:

[Mark A. Perry](#)

Appeals & Strategic Counseling
Washington, D.C.
+1 202 682 7511
mark.perry@weil.com

[Zack Tripp](#)

Appeals & Strategic Counseling
Washington, D.C.
+1 202 682 7220
zack.tripp@weil.com

[Josh Wesneski](#)

Appeals & Strategic Counseling
Washington, D.C.
+1 202 682 7248
joshua.wesneski@weil.com

[Mark Pinkert](#)

Appeals & Strategic Counseling
Miami
+1 305 577 3148
mark.pinkert@weil.com

© 2024 Weil, Gotshal & Manges LLP. All rights reserved. Quotation with attribution is permitted. This publication provides general information and should not be used or taken as legal advice for specific situations that depend on the evaluation of precise factual circumstances. The views expressed in these articles reflect those of the authors and not necessarily the views of Weil, Gotshal & Manges LLP. If you would like to add a colleague to our mailing list, please [click here](#). If you need to change or remove your name from our mailing list, send an email to weil.alerts@weil.com.