GIBSON DUNN

Supreme Court Holds The Seventh Amendment Entitles A Defendant To A Jury Trial When The SEC Seeks Civil Penalties For Securities Fraud

Client Alert | June 27, 2024

***Securities & Exchange Commission v. Jarkesy*, No. 22-859** – Decided June 27, 2024

Today, the Supreme Court held 6-3 that the Seventh Amendment to the United States Constitution requires the SEC to sue in federal court, not in the agency's in-house court, when the SEC seeks civil penalties for fraud.

> *"[T]he Government has created claims whose causes of action are modeled on common law fraud and that provide a type of remedy available only in law courts. This is a common law suit in all but name. And such suits typically must be adjudicated in Article III courts."*

Chief Justice Roberts, writing for the Court

Background:

In 2013, the SEC brought administrative enforcement proceedings against George Jarkesy and his investment advisor for securities fraud. After an SEC in-house administrative law judge found that Jarkesy committed securities fraud, the SEC ordered Jarkesy to pay hundreds of thousands of dollars in civil penalties and disgorgement.

A divided panel of the Fifth Circuit held unconstitutional parts of the SEC's in-house adjudication process for three independent reasons: (1) The Seventh Amendment right to a jury trial barred the SEC's use of administrative proceedings to impose civil penalties; (2) Congress unconstitutionally vested the SEC with the unfettered discretion to decide whether to enforce securities laws in an agency adjudication or in federal court; and (3) Congress unconstitutionally insulated SEC administrative law judges from removal by allowing their firing only upon a finding of "good cause" by the Merit Systems Protection Board, whose members themselves are subject to removal only in certain limited circumstances.

Issue:

Can the SEC require defendants in actions for civil penalties to defend themselves before the agency tribunal rather than before a jury in federal court?

Court's Holding:

No. The Seventh Amendment entitles defendants to a jury trial in federal court for SEC fraud actions seeking civil penalties.

What It Means:

- Today's decision will have a significant impact on the forum in which the SEC can enforce the statutes it administers—in the agency's in-house administrative court, or in federal court before an Article III judge and a jury. The Court explained that "if a suit is in the nature of an action at common law, then the matter presumptively concerns private rights, and adjudication by an Article III court is mandatory." The Court also emphasized that the form of relief the SEC sought in this case—civil

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

penalties—was “all but dispositive” on the issue of whether the Seventh Amendment applied because civil penalties are “a type of remedy at common law that could only be enforced in courts of law.” Thus, going forward, if the SEC seeks civil penalties on a claim that resembles a traditional common-law action, the SEC very likely must proceed only in federal court, not in the administrative court.

- The decision will also likely impact how the SEC settles enforcement actions with unregistered parties, including public companies and individual executives, at least for violations that resemble traditional common-law actions. The imposition of penalties in such settlements will likely require a federal court judgment, which in turn will subject settlements to potential scrutiny by a district court prior to endorsement of the judgment.

- In the near term, the decision may have little impact on SEC enforcement because the agency hasn’t pursued contested actions seeking penalties in its administrative forum. But long term, requiring the SEC to bring enforcement actions in federal court will afford defendants access to independent judges and juries, the rules of evidence and civil procedure, and other procedural protections.

- The Court’s decision could have broader implications for other agencies and other theories of liability. Many agencies have in-house courts that adjudicate alleged violations of the statutes they implement. If an agency seeks monetary penalties on a ground that resembles a traditional action at common law—such as a fraud or negligence claim—the Seventh Amendment presumptively requires the agency to proceed in federal court. The “public rights” exception to this principle will be construed more narrowly than suggested by some prior Court decisions. Defendants facing agency enforcement actions therefore should carefully consider the nature of the agency’s claims and requested penalties and assert their constitutional rights to a jury trial. Similarly, parties to agency investigations should consider asserting those constitutional rights in the event the agency signals it intends to take enforcement action.

- Because the Seventh Amendment question resolved the case, the Court declined to reach the other constitutional questions that the petitioner presented. Thus, the Court has yet to decide whether Congress unconstitutionally delegated to the SEC the power to choose the forum in which to proceed or unconstitutionally insulated the administrative law judge from removal.

The Court’s opinion is available here.

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice group leaders:

Appellate and Constitutional Law Practice

Thomas H. Dupree Jr. +1 202.955.8547 tdupree@gibsondunn.com	Allyson N. Ho +1 214.698.3233 aho@gibsondunn.com	Julian W. Poon +1 213.229.7758 jpoon@gibsondunn.com
Lucas C. Townsend +1 202.887.3731 ltownsend@gibsondunn.com	Bradley J. Hamburger +1 213.229.7658 bhamburger@gibsondunn.com	Brad G. Hubbard +1 214.698.3326 bhubbard@gibsondunn.com

Related Practice: Securities Enforcement

Mark K. Schonfeld +1 212.351.2433 mschonfeld@gibsondunn.com	David Woodcock +1 214.698.3211 dwoodcock@gibsondunn.com

Related Practice: Administrative Law and Regulatory Practice

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**

Eugene Scalia
+1 202.955.8210
escalia@gibsondunn.com

Helgi C. Walker
+1 202.887.3599
hwalker@gibsondunn.com

Stuart F. Delery
+1 202.955.8515
sdelery@gibsondunn.com

Akiva Shapiro
+1 212.351.3830
ashapiro@gibsondunn.com

Russell Balikian
+1 202.955.8535
rbalikian@gibsondunn.com

Related Practice: Securities Litigation

Reed Brodsky
+1 212.351.5334
rbrodsky@gibsondunn.com

Monica K. Loseman
+1 303.298.5784
mloseman@gibsondunn.com

Brian M. Lutz
+1 415.393.8379
blutz@gibsondunn.com

Craig Varnen
+1 213.229.7922
cvarnen@gibsondunn.com

Mary Beth Maloney
+1 212.351.2315
mmaloney@gibsondunn.com

This alert was prepared by associates Elizabeth Kiernan and Jessica Lee.

© 2024 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com.

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

Related People

Elizabeth A. Kiernan

Related Capabilities

Appellate and Constitutional Law

Securities Enforcement

Administrative Law and Regulatory Practice

Securities Litigation

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit us at www.gibsondunn.com. | **www.gibsondunn.com**