GIBSON DUNN

Supreme Court Holds That Federal District Courts Have Jurisdiction To Hear Structural Challenges To FTC And SEC

Client Alert | April 14, 2023

Decided April 14, 2023 ***Axon Enterprise, Inc. v. FTC*** **(No. 21-86),** ***SEC v. Cochran*** **(No. 21-1239) The Supreme Court held today in two related cases that federal district courts have jurisdiction to resolve certain challenges to the structure or existence of the Federal Trade Commission ("FTC") and Securities and Exchange Commission ("SEC"), rejecting the argument that litigants can raise such challenges only on review of a final agency action before the court of appeals.**
Background: Federal district courts have jurisdiction to hear "civil actions arising under the Constitution." 28 U.S.C. § 1331. Federal courts of appeals also have jurisdiction to review certain agency actions, including final orders of the FTC and SEC. 15 U.S.C. §§ 45, 78y(a)(1).

Axon Enterprise, a company that was subject to an FTC enforcement action, and Michelle Cochran, a certified public accountant who was subject to an SEC enforcement action, each sued the respective agency in federal district court while their enforcement actions were pending. Axon and Cochran argued that the agencies' basic structure and operations were unconstitutional and the pending enforcement actions were unlawful.

The district courts in both cases dismissed the complaints, holding that the specialized judicial-review provisions in the FTC Act and Exchange Act deprived them of jurisdiction by funneling review of final agency orders to the federal courts of appeals. The Fifth and Ninth Circuits reached different conclusions on that issue—the Ninth Circuit affirmed the dismissal for lack of jurisdiction, but the en banc Fifth Circuit reasoned that structural constitutional challenges to an agency's jurisdiction were not the sort of claims Congress meant to funnel to the courts of appeals through the statutory review scheme.

Issue: Whether, by giving the courts of appeals jurisdiction to review final agency orders of the FTC and SEC, Congress stripped federal district courts of jurisdiction to hear constitutional challenges to the agencies' structure or existence. **Court's Holding:** Federal district courts have jurisdiction under 28 U.S.C. § 1331 to hear cases raising structural challenges to the FTC or SEC.

> *"[T]he review schemes set out in the Exchange Act and the FTC Act do not displace district court jurisdiction over Axon's and Cochran's far-reaching constitutional claims."*

Justice Kagan, writing for the Court

Gibson Dunn submitted an amicus brief on behalf of Raymond J. Lucia, Sr., George R. Jarkesy, Jr., and Christopher M. Gibson, in support of respondent in No. 21-1239: *Michelle Cochran*

What It Means:

- Today's decision allows people and businesses subjected to FTC and SEC (and

Related People

Lucas C. Townsend

Bradley J. Hamburger

Brad G. Hubbard

Russell Balikian

Matt Aidan Getz

Robert A. Batista

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

potentially other) administrative enforcement actions to promptly raise certain structural challenges in court, without having to first complete long and costly agency proceedings (which often settle before a final order). As the Court recognized, permitting suits to proceed in federal district court allows regulated parties to vindicate the "here-and-now injury" of being subjected to unconstitutional administrative processes.

- The Court's holding likely implicates other agencies subject to similar review provisions, such as the Consumer Financial Protection Bureau.
- More generally, the Court's decision confirms that Congress's establishment of special administrative review procedures does not necessarily require a claim to be channeled through that administrative process when: (1) doing so would preclude meaningful judicial review, (2) the claim is collateral to the administrative-review provisions, and (3) the claim is beyond the agency's expertise to adjudicate.
- The Court focused its holding on structural constitutional claims and did not specifically address whether other types of claims—fact-specific constitutional due-process claims, for example—may be raised directly in federal court or must instead proceed through the administrative-review process first.
- The decision will likely keep pressure on the SEC to file contested claims in district court, providing regulated entities challenging SEC actions with greater procedural rights and protections than are available in administrative proceedings.
- Today's decision—issued with no dissent—reflects the current Court's strong interest in reining in excesses of the administrative state by reinforcing constitutional limitations on the structure, composition, and operation of administrative agencies.

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 Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Allyson N. Ho +1 214.698.3233 aho@gibsondunn.com	**Thomas H. Dupree Jr.** +1 202.955.8547 tdupree@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: Administrative Law and Regulatory Practice

Eugene Scalia +1 202-955-8210 escalia@gibsondunn.com	**Helgi C. Walker** +1 202.887.3599 hwalker@gibsondunn.com

Related Practice: Antitrust and Competition

Rachel S. Brass +1	**Stephen Weissman** +1

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

415.393.8293 rbrass@gibsondunn.com	202.955.8678 sweissman@gibsondunn.com

Related Practice: Securities Enforcement

Richard W. Grime +1 202.955.8219 rgrime@gibsondunn.com	**Mark K. Schonfeld** +1 212.351.2433 mschonfeld@gibsondunn.com	**David Woodcock** +1 214.698.3211 dwoodcock@gibsondunn.com

Related Practice: Litigation

Reed Brodsky +1 212.351.5334 rbrodsky@gibsondunn.com	**Theane Evangelis** +1 213.229.7726 tevangelis@gibsondunn.com	**Veronica S. Moyé** +1 214.698.3320 vmoye@gibsondunn.com

Related Capabilities

Appellate and Constitutional Law

Administrative Law and Regulatory Practice

Antitrust and Competition

Securities Enforcement

Litigation

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