

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

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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:

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