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Appellate and Constitutional Law Update

June 11, 2026

Supreme Court Holds That Investment Company Act Of 1940 Does Not Create A Private Right Of Action For Rescission Of Contracts

FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd, No. 24-345 –
Decided June 11, 2026

Today, the Supreme Court held 6-3 that Section 47(b) of the Investment Company Act of 1940 does not create a private right of action for rescission of contracts that violate the Act.

“[N]othing in the text or structure of the ICA indicates that Congress authorized private parties to enforce virtually every provision in the statute. For a cause of action to exist, we would have to create it.”

JUSTICE BARRETT, WRITING FOR THE COURT

Background:

The Investment Company Act of 1940 (ICA) comprehensively regulates investment companies and affords the Securities and Exchange Commission primary responsibility for enforcing its

provisions. Any contract that violates the ICA or any rule or regulation thereunder “is unenforceable by either party” under Section 47(b)(1) “unless a court finds that under the circumstances enforcement would produce a more equitable result” and “would not be inconsistent with the purposes of this subchapter.” 15 U.S.C. § 80a-46(b)(1). To that end, “a court may not deny rescission at the instance of any party unless such court finds that under the circumstances the denial of rescission would produce a more equitable result than its grant and would not be inconsistent with the purposes of this subchapter.” *Id.* § 80a-46(b)(2).

Several investment companies sued several investment funds under Section 47(b), seeking rescission of contracts that allegedly violated the ICA. Relying on an earlier decision by the Second Circuit, the district court held that Section 47(b) created an implied private right of action. It then granted summary judgment to the investors and ordered the contracts rescinded. The Second Circuit affirmed.

Issue:

Whether Section 47(b) of the ICA creates a private right of action for rescission of contracts that violate the ICA.

Court's Holding:

No. Section 47(b) does not create a freestanding private cause of action for parties to seek rescission of contracts that violate the ICA.

What It Means:

- Today’s decision reiterates that the Court has “rejected the practice of fashioning rights of action” absent clear congressional intent in a statute’s text and structure. Op. 3. And “nothing in the text or structure of the ICA indicates that Congress authorized private parties to enforce virtually every provision in the statute.” Op. 8. Instead, Section 47(b) acts as a “mandate” *to courts* about their authority under the ICA in cases before it under other valid causes of action—like claims for breach of contract or for breach of fiduciary duties.
- The Court’s decision reaffirms the SEC’s central role in enforcing—or exempting investment companies from—the ICA and reduces the risk that private suits will undermine the SEC’s enforcement priorities.
- The Court’s decision also reveals sharp disagreement among the Justices about the role of legislative history in statutory interpretation. The majority rejects the use of legislative history to “divin[e] how Congress would have wanted courts to resolve” issues, remarking that such a mode of interpretation “depends on the fictional premise that hundreds of legislators (not to mention the President) shared a unified private view of how the statute should apply.” Op. 11. On the other hand, Justice Jackson, joined by Justice Sotomayor, called use of “legislative history as a tool of statutory interpretation . . . a time-honored tradition.” Justice Jackson Dissent 16. Justice Kagan, writing for herself, “fall[s] someplace in between,” explaining that “[r]eliance on legislative history may be appropriate” when statutory text is “stubbornly ambiguous.” Kagan Dissent 1.

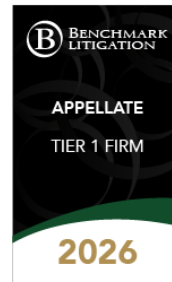
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The Court's opinion is available [here](#).

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