

June 27, 2024

Supreme Court Requires Jury in SEC Enforcement Proceedings

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Case could signal broad jury rights for defendants in administrative enforcement actions.

The Supreme Court struck a major blow to Securities and Exchange Commission enforcement proceedings Thursday, ruling that the Seventh Amendment entitles defendants to a jury in cases seeking civil penalties.

The case, *SEC v. Jarkesy*, arose a decade ago when the SEC sued George Jarkesy for alleged securities fraud. But the proceeding did not go to federal court. Instead, the SEC—as the Dodd-Frank Act permits—sued in its own “internal” tribunal. There, an administrative law judge (who works for the SEC) oversaw the trial—without a jury. Mr. Jarkesy’s initial appeal went before the SEC Commissioners who had voted to file the complaint in the first place.

Mr. Jarkesy then petitioned for review in federal court. And in 2022, the Fifth Circuit Court of Appeals invalidated the SEC proceeding on three separate grounds, including the lack of a jury. The Supreme Court on June 27 affirmed the Fifth Circuit ruling that the Seventh Amendment’s jury right applies to defendants in an SEC proceeding seeking civil monetary penalties.

The Amendment’s text is far from clear. It states in part: “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.” But “suits at common law” hardly provides guidance, so the extent of the jury right has long been contested. And over time, the Supreme Court has developed a two-step process for analyzing whether a claim requires a jury. *First*, courts ask whether the claim is analogous to a common law action that existed at the time of ratification. That includes statutory violations “unknown to the common law,” so long as the claim “sound[s] basically in tort.” *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 709 (1999). *Second*, courts consider the requested relief. Legal remedies—such as monetary damages—often require a jury, while equitable relief—such as restitution—does not.

Federal agencies have for decades avoided jury trials under the so-called “public rights” exception to the Seventh Amendment. That doctrine allows agencies to proceed through in-house adjudication—rather than in court with judges and juries—when the government sues to vindicate the rights of the public at large. The seminal case was *Atlas Roofing Co. v. Occupational Safety and Health Review Comm’n*, 430 U. S. 442 (1977) where the Court permitted juryless agency hearings when Congress created a new cause of action to enforce safety laws.

Jarkesy—although not explicitly overruling *Atlas Roofing*—drove a hole through the public rights exception. Tracing the history of the jury right to the Founding Era, Chief Justice Roberts wrote for the majority that *Atlas Roofing* did not apply because there the Act in question “did not borrow its cause of action from the common law.” Instead, it created a “novel” action akin to a “detailed building code.” And those “standards bring no common law soil with them.” Slip Op. at 23.

Not so for the Securities and Exchange Act claim in *Jarkesy*, which, the Court held, resembled garden-variety fraud—well-known to the common law. As Justice Roberts put it: the Seventh Amendment considers whether the purpose of an Act is “to enable the Federal Government to bring

or adjudicate claims that traced their ancestry to the common law.” And “fraud” fits the bill. So one step—whether the case involves a common law claim—was satisfied.

The remedy, too, supported a jury. The SEC can seek millions of dollars in civil penalties based on alleged violations of the Act, and “money damages are the prototypical common law remedy.” Slip. Op. at 9. The key question, according to the Court, was whether the remedy “is designed to punish or deter the wrongdoer, or, on the other hand, solely to restore the status quo.” The former suggests a jury right; the latter does not. And the SEC enforcement scheme sought to “punish the defendant rather than to restore the victim,” so it amounted to a legal common law remedy. Taken together, the cause of action and remedy meant that Mr. Jarkesy possessed a jury right.

But the Court did not stop there. It briefly addressed arguments often raised by defendants in agency hearings who have long pointed to perceived unfairness: the agency both files the complaint and serves as the judge and jury. The opinion hinted—but did not rule—that the separation of powers might limit agency adjudication on these grounds. After all, Chief Justice Roberts wrote, allowing “Congress to concentrate the roles of prosecutor, judge, and jury in the hands of the Executive Branch” would be “the very opposite of the separation of powers that the Constitution demands.” Slip Op. at 27. Justice Gorsuch expanded on this idea in his concurrence, writing that Article III of the Constitution and the Due Process Clause of the Fifth Amendment ensure a *neutral* judge and jury. On his view, the Constitution promises a “fair trial in a fair tribunal”—something that agency adjudication often fails to satisfy. Gorsuch Concurrence at 1 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

Beyond limiting the SEC’s power, *Jarkesy* raises vast questions about various administrative enforcement proceedings. Similar cases are currently pending that challenge the Federal Deposit Insurance Corporation (Fifth Circuit), Consumer Product Safety Commission (Tenth Circuit), United States Department of Agriculture (Sixth Circuit), Department of Labor (Third Circuit), the Federal Trade Commission, and others. Defendants and respondents in agency proceedings will likely continue to raise the jury argument—as well as issues previewed by Justice Gorsuch, such as due process of law and Article III.

Yet, it is too early to know just how far *Jarkesy* will reach. Some agencies—such as the Consumer Product Safety Commission—do not impose civil penalties through in-house adjudication. And other agencies use internal tribunals only for equitable remedies, such as restitution. *Jarkesy* does not necessarily foreclose such enforcement. Nor does *Jarkesy* address agencies engaged in “public rights” enforcement. Whether and to what extent that doctrine survives *Jarkesy* remains unclear.

So, for now, *Jarkesy* answers only a narrow—but vital—question. The SEC and similar agencies will face limits in their powers to impose civil penalties through internal adjudication. But that does not necessarily strip the agencies of enforcement power. The SEC can now move to federal court to bring actions against defendants. That will require more resources, given the cost of jury trials. Yet, on the other hand, defendants may be less willing to endure a full jury trial in federal court, making them *more* likely to settle.

Regardless of any uncertainty, defendants in agency enforcement actions should be prepared to raise their jury right arguments. Whether the Court will further limit agency adjudication by way of the due process clause, the separation of powers, or Article III will have to wait for another day.

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