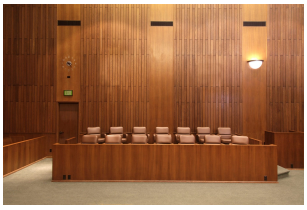

Supreme Court Curtails Agencies' Authority to Impose Civil Penalties Without a Jury Trial

Sep 26, 2024

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Securities and Exchange Commission v. Jarkesy, 144 S. Ct. 2117 (June 27, 2024)

In *Securities and Exchange Commission v. Jarkesy*, the U.S. Supreme Court struck down provisions of the 2010 Dodd-Frank Act that authorized the U.S. Securities and Exchange Commission (SEC) to impose civil penalties in administrative proceedings without a jury trial in federal court. Writing for the 6-3 majority, Chief Justice Roberts□ over a strident dissent by Justice Sotomayor□ held that the defendants had a Seventh Amendment right to a jury trial before monetary civil penalties could be imposed. In reaching this conclusion, the Court called into question the constitutionality of numerous other statutes authorizing federal administrative agencies to impose monetary civil penalties in administrative proceedings, rather than in jury trials before Article III courts.

The SEC has long had authority to bring civil enforcement actions for violations of federal securities laws, either in federal court proceedings or in administrative agency proceedings. Prior to 2010, however, if the SEC sought to impose monetary civil penalties, it could only do so in a federal court proceeding where the defendant would have a right to a jury trial. But in the 2010 Dodd-Frank Act, Congress authorized the SEC to seek and impose monetary civil penalties in administrative proceedings to the same extent it could in federal court.

Jarkesy originated when the SEC brought an enforcement action against the petitioners for violating anti-fraud provisions in federal securities laws. The SEC chose to adjudicate the matter administratively rather than in a federal court proceeding. The proceeding resulted in the imposition of a $300,000 civil penalty, in addition to disgorgement and restrictions on the petitioners' participation in the securities industry. The petitioners sought

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judicial review of this order, and the Fifth Circuit held that, along with violating other constitutional guarantees, the imposition of civil penalties before an agency and without a jury violated the petitioners' Seventh Amendment right to a jury trial in civil cases.

In a 6-3 opinion divided along ideological lines, the Supreme Court affirmed the Fifth Circuit's decision. The majority initially held that an action to impose monetary penalties for violation of anti-fraud provisions would be subject to the Seventh Amendment's right to a jury trial if it had been brought in federal court (the only forum where the Seventh Amendment applies).

Generally, the applicability of the Seventh Amendment depends on whether a claim is "legal," as opposed to equitable, in nature. Claims for monetary relief—including monetary civil penalties—typically are interpreted as "legal" in nature and thus subject to the Seventh Amendment, particularly when they are intended to punish or deter culpable behavior and not merely return or restore specific funds to their rightful owner. Applying this standard, the Court concluded in this case, "the remedy [civil penalties] is all but dispositive," because it sought to impose monetary liability based in part on the petitioners' culpability and interests in deterrence. This conclusion was buttressed by the fact that the statutory violations at issue were similar (but not identical) to common-law fraud claims, which are quintessential examples of "legal" claims subject to the Seventh Amendment.

Having determined that the proceeding would be subject to the Seventh Amendment if brought in federal court, the Supreme Court next considered whether the so-called "public rights" doctrine applied. Under Article III, Congress cannot withdraw traditional common-law actions concerning private rights from the judicial sphere. However, the "public rights" doctrine recognizes that Congress could designate certain types of matters for decision by the legislative or executive branch, without implicating the Seventh Amendment. Surveying the cases that have applied this doctrine, however, the majority concluded that the "public rights" doctrine had been narrowly limited to categories of actions that have historically been recognized as capable of being determined exclusively by the other branches—such as immigration, customs

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and tariffs, and relations with Native American tribes and securities fraud did not have such a pedigree.

In reaching this conclusion, the majority declined to follow the Court's prior decision in *Atlas Roofing Co. v. Occupational Safety and Health Review Commission*, 430 U.S. 442 (1977), which upheld, under the "public rights" doctrine, statutory provisions authorizing OSHA to impose civil penalties for violating federal workplace safety standards in administrative proceedings without a jury. The Court held that *Atlas Roofing* did not control because unlike the securities fraud laws, OSHA's safety standards were not rooted in common-law causes of action like fraud. OSHA standards were more closely akin to a "detailed building code" and involved a "new cause of action . . . unknown to the common law." While the majority did not entertain the petitioners' request to overrule *Atlas Roofing*, it did echo the view of Justice Gorsuch's concurring opinion that "*Atlas Roofing* represents a departure from our legal traditions," and noted many commentators' criticisms of the decision.

Justice Sotomayor, joined by Justices Kagan and Jackson, issued a stinging dissent, declaring: "Today's decision is a power grab" effecting a "seismic shift in th[e] Court's jurisprudence." The dissent accused the majority of discarding a "mountain of precedent" that had historically recognized Congress' authority under the "public rights" doctrine to authorize administrative adjudication of statutory rights belonging to the government, as opposed to private parties. Tracing the decisions addressing the "public rights" doctrine, the dissent rejected any suggestion that this doctrine had been limited to some collection of specific historical practices related to foreign commerce, immigration or similar issues.

To illustrate the potential impact of the majority opinion, the dissent noted that Congress had enacted more than 200 statutes authorizing more than two dozen agencies to impose civil penalties for statutory obligations, purportedly in reliance on the Court's prior precedents. The dissent further noted that many of these agencies, including OSHA, the Federal Energy Regulatory Commission, the Federal Mine Safety and Health Review Commission, and the Department of Agriculture, were only authorized to impose civil penalties administratively and did not have the option of seeking

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relief in federal court, calling into question what enforcement authority remained for them following the Court's decision.

Key Takeaways

- The majority opinion struck down portions of the 2010 Dodd-Frank Act, which authorized the SEC to impose civil monetary penalties for violations of federal securities fraud laws in administrative proceedings without a jury. Under the decision, the SEC may only obtain such penalties in federal court proceedings where the defendant has a Seventh Amendment right to a jury.
- The majority opinion calls into question, but does not directly decide, the authority of many other federal agencies to impose civil monetary penalties in administrative proceedings, rather than in federal court jury trials.
- Going forward, the constitutionality of other federal administrative enforcement proceedings may depend primarily on the nature of the remedy—i.e., whether monetary penalties are being sought, and whether monetary relief is imposed to punish or deter wrongdoing or instead for the purpose of restoring property to its rightful owner. It may also depend in part on whether the statutory claim has roots in traditional common-law causes of action, like fraud or negligence.

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