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Tides are Turning: Supreme Court Reining in the Administrative State

In a 6-3 decision by the Supreme Court last week in *Securities and Exchange Commission v. Jarkesy*, the Court held that the Seventh Amendment must stand: accused defendants in antifraud actions have a right to a jury trial, and accordingly, the Securities and Exchange Commission (the “SEC”) may not seek civil penalties in such cases through their in-house enforcement tribunals, which lack juries.

This landmark finding stymies the SEC’s ability to bring civil penalties outside a federal court venue. However, the Court’s opinion did not conclusively address how the Seventh Amendment may apply in cases alleging violations other than those promulgated in part under antifraud statutes, such as those related to registration or books and records. Chief Justice Roberts for the majority opinion wrote “[enforcement proceedings conducted by the SEC internally] is the very opposite of the separation of powers that the Constitution demands.” The extent of this decision has yet to be seen and ultimately may impact other federal agencies, including the Justice Department, Environmental Protection Agency (“EPA”) and Federal Communications Commission, which use similar in-house enforcement proceedings without a jury present.

Similarly, in a 6-3 ruling in the case *Loper Bright Enterprises v. Raimondo*, the Court further moved to weaken the power of federal agencies by overturning the 1984 case *Chevron U.S.A., Inc. v. The Natural Resources Defense Council, Inc.* The legal doctrine known as “*Chevron deference*” prohibited a federal court from substituting its own interpretation of a vague statute in place of a federal agency’s “reasonable” interpretation of the same statute. To be accorded “*Chevron deference*,” an agency’s interpretation had to be “rational” or “reasonable.” With *Chevron* overturned, new rules and regulations created by the administrative state will likely have a more difficult time surviving the scrutiny of federal courts, even if the federal agency in question did act in a “reasonable” or “rational” manner under the law. The fall of *Chevron* may also require Congress to act with more specificity when drafting new legislation.

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