

Recent Supreme Court Decisions Signal Increased Investor Litigation

By: Carol C. Villegas and Daniell Izzo, Labaton Keller Sucharow LLP

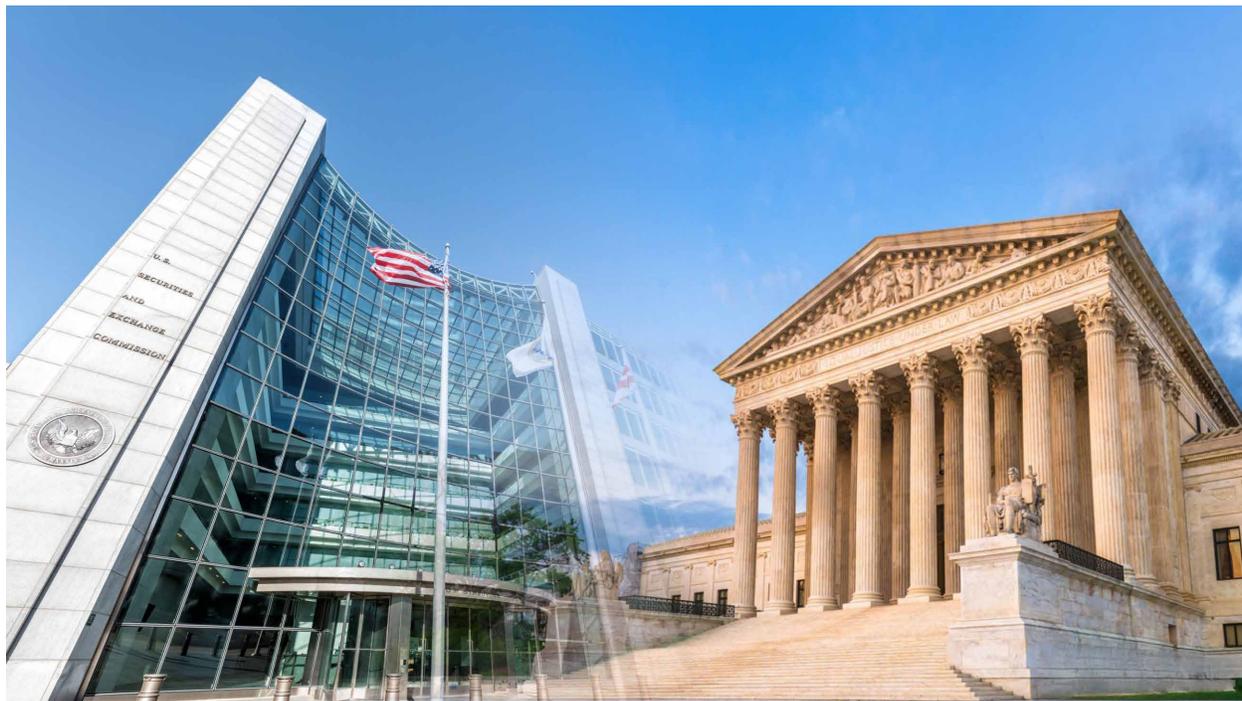


Photo Illustration © 2025, iStock.com

U.S. law has historically offered investors two primary avenues for protecting their interests: (i) through enforcement by U.S. regulatory agencies, like the Securities and Exchange Commission (“SEC”), and (ii) through private investor litigation. In addition to safeguarding investor interests, these avenues also serve to regulate U.S. financial markets, serving as a deterrent against securities fraud.

However, two recent Supreme Court decisions significantly curtailed U.S. agency power, thereby limiting the SEC’s ability to protect investors interests (and regulate financial markets). These decisions effectively shift power from the SEC and their administrative courts – where many of these issues have been historically resolved – to the U.S. court system instead. Investors’ will face new obstacles in attempting to advance their interests through U.S. regulatory agencies, leaving them with effectively one option: litigation.

On June 27, 2024, the Supreme Court issued a decision in *SEC v. Jarkesy*.¹ This case concerned a civil administrative action for violations of federal securities laws brought by the SEC against George Jarkesy and investment firm, Patriot 28, LLC.² An administrative law judge overseeing the matter found the defendants liable for \$300,000 in civil penalties.³ The defendants sought review of the findings and civil penalties in the U.S. Court of Appeals for the Fifth Circuit.⁴ Ultimately, the Fifth Circuit Court reversed and remanded the action on the grounds that the SEC’s findings violated the Seventh Amendment of the U.S. Constitution.⁵ Specifically, the Appellate Court found that the SEC’s administrative hearing and determination violated the defendants’ right to a jury trial.⁶ The Supreme Court agreed -- holding that, under the Seventh Amendment, defendants are entitled to a trial by jury (in federal court) where the SEC seeks civil penalties for securities fraud.⁷ [🔗](#)

As a practical matter, *Jarkes* narrows the SEC's power to maintain civil administrative actions for securities fraud. Indeed, the SEC is now required to bring any action that may involve civil penalties in federal court. The Supreme Court's curtailment of the SEC's authority has also resulted in many questions about the SEC's future approach to enforcement actions -- namely, whether the SEC will be more selective in its future enforcement efforts.

In keeping with its examination of agency power, the Supreme Court issued a decision in *Loper Bright Enterprises v. Raimondo* on June 28, 2024.⁹ This decision overturned the longstanding doctrine established by *Chevron USA v. National Resources Defense Council* by holding that courts may now rely on their own interpretations of ambiguous laws, without deference to applicable federal agencies, like the SEC.⁹ In the majority opinion, Chief Justice Roberts explained that the *Chevron* doctrine (which called for judicial deference to agency rulemaking) was not compatible with the court's duty to "say what the law is."¹⁰ *Loper* upends the previous balance of power between administrative agencies and federal courts, narrowing (and possibly eliminating) agencies' ability to interpret and implement federal law. While the full effect of this decision remains to be seen, many suspect that agencies, like the SEC, will issue fewer regulations. Moreover, in instances where agencies do promulgate administrative law, there will be a greater risk of inconsistency as courts across the country issue varying interpretations of the regulations.

The Supreme Court's decisions to reduce agency power directly impact the SEC, one of the central administrative agencies in the U.S. Notably, the decisions do not constitute a complete elimination of the powers previously afforded to the SEC. Instead, the Supreme Court has shifted the power back to the hands of Article III judges -- a clear signal that issues, like securities fraud issues, should be litigated in court.



- ANNUAL COMPENSATION REPORT -

Public Pension Insights 2024:

A Comprehensive Survey on Compensation Trends

Find in-depth compensation data for 88 public pension roles and explore industry recruitment and retention trends.

+ Access an Interactive Dashboard

LEARN MORE

For more information visit www.ncpers.org/public-pension-compensation-survey

Indeed, in the wake of these decisions, investors must reevaluate their options for protecting shareholder value. With the SEC constrained by the Supreme Court's holdings and limited resources, solely protecting shareholder interests in connection with the SEC may not be enough. Fortunately, market participants have strong (and potentially expanded) opportunities to exercise their rights in federal court. For example, investors may now seek clarification of statutory interpretations related to their fraud actions in court without having to expend additional time and resources waiting for guidance from the SEC. Additionally, market participants have the opportunity to redress financial fraud through the U.S. class action framework. Securities fraud actions are uniquely poised for class treatment under federal law, allowing investors to bring class actions that redress corporate wrongdoing and promote positive change on a widespread basis. While these Supreme Court decisions have been seen as pro-business -- in that they decrease the SEC's power to regulate -- these decisions could have a negative effect on publicly traded companies. Big business should anticipate a marked increase in private securities litigation.

As investors look ahead, protecting their rights through litigation will become increasingly important. President-elect Trump has already indicated that he will make drastic changes to the SEC, including by publicizing plans to fire SEC Chair Gary Gensler.¹¹ This and other anticipated political changes will continue to slow the SEC's already declining in-house efforts, further increasing the need for and likelihood of investor litigation to protect shareholder¹² rights under the federal securities laws. ◆

Carol C. Villegas is a Partner in the New York office of Labaton Keller Sucharow LLP focusing on prosecuting complex securities fraud on behalf of institutional investors and individuals. Leading one of the Firm's Securities Litigation teams, she is actively overseeing litigation against Boeing, PayPal, Olaplex, DocuSign, and Catalent, among others. In addition to her litigation responsibilities, Carol holds a variety of leadership positions within the Firm, including serving on the Firm's Executive Committee, Chair of the Firm's Women's Networking and Mentoring Initiative, and as Chief of Compliance.

Danielle Izzo is an Associate in the New York office of Labaton Keller Sucharow LLP focusing her practice on litigating securities fraud class actions on behalf of institutional investors. Most notably, she assisted the Firm's teams that secured notable recoveries for investors in *Boston Retirement System v. Uber Technologies, Inc.* (\$200 million settlement, pending final court approval) and *In re Allstate Corporation Securities Litigation* (\$90 million settlement).

Endnotes:

¹ SEC v. Jarkesy, 603 U.S. _____, at 2 (2024) (No. 22-859).

² Id.

³ Id.

⁴ Jarkesy v. SEC, 34 F.4th 446 (5th Cir. 2022).

⁵ Id.

⁶ Id.

⁷ SEC v. Jarkesy, 603 U.S. _____, at 2 (2024) (No. 22-859).

⁸ Loper Bright Enterprises v. Raimondo, No. 22-451, 603 U.S. __ (2024).

⁹ See id.; Chevron USA v. National Resources Defense Council, 467 U.S. 837 (1984).

¹⁰ Loper, slip op. at 7.

¹¹ <https://www.bloomberg.com/news/articles/2024-07-27/trump-pledges-to-fire-gensler-pick-regulators-who-love-crypto?embedded-checkout=true>.

¹² Bloomberg Law's SEC ALJ Analytics Tracker, July 30, 2024-July 29, 2024.