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Supreme Court Permits Federal District Courts to Consider Constitutional Challenges
to Ongoing SEC and FTC Administrative Proceedings

We [previously reported](#) on the Supreme Court's grants of certiorari in [SEC v. Cochran](#) and [Axon Enterprise, Inc. v. FTC](#), in which the Court agreed to consider whether federal district courts have jurisdiction to hear constitutional challenges to the structure of the SEC's and FTC's administrative adjudication proceedings before those proceedings become final. Last Friday, [a unanimous Court held](#) that federal courts do possess such jurisdiction.

Writing for the Court, Justice Kagan explained that while Congress has enacted statutory review regimes that displace federal jurisdiction over challenges to certain types of agency action, such schemes do not automatically cover every claim concerning agency action. Accordingly, the question was whether the particular constitutional claims brought by respondents were "of the type Congress intended to be reviewed [solely] within [the] statutory structure."

The Court found in both cases that the claims were not "of the type" Congress intended to channel through the SEC's and FTC's statutory review schemes and so the district court could adjudicate such claims without awaiting a final agency decision. The Court reasoned that because the harm alleged was simply being subjected to the allegedly unconstitutional administrative proceeding itself, precluding district court jurisdiction could foreclose meaningful judicial review altogether. In addition, the constitutional claims were outside the agencies' expertise and unrelated to the subject matter of the agency proceedings. As Justice Kagan put it, while the FTC may "know[] a good deal about competition policy," it knows "nothing special about the separation of powers."

This decision is the latest in a series by the Court that threaten to diminish the power of the administrative state at a time when agency heads have announced increasingly aggressive enforcement agendas. But while important, the Court's decision is also a limited one. It addresses federal district courts' *jurisdiction* to hear constitutional challenges to ongoing SEC and FTC administrative proceedings. Nothing in the Court's opinion touches on judicial deference to agency expertise outside the context of constitutional challenges or on the ultimate merits of those challenges.

Companies operating within a regime of administrative regulation must weigh the types of challenges that best advance their business interests and strategies, and the manner in which to bring them. With the avenue opened by Friday's decision, that calculus should now include a careful analysis of whether to launch a parallel constitutional challenge in federal district court alongside any more conventional challenge to agency action within the confines of an administrative proceeding itself.

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