



# *FCC v. AT&T*: Supreme Court Rejects Seventh Amendment Challenge to FCC Forfeiture Penalties

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On June 4, 2026, the U.S. Supreme Court [held](#) that the Federal Communications Commission’s (FCC or Commission) issuance of forfeiture penalties does not violate the right to a jury trial enshrined in the [Seventh Amendment of the U.S. Constitution](#). The Court’s decision is a significant sequel to its 2024 decision in *SEC v. Jarkesy*. In *Jarkesy*, the Court [held](#) that the Seventh Amendment prohibits the Securities and Exchange Commission (SEC) from imposing civil penalties for securities fraud by way of an in-house administrative adjudication. By contrast, in *FCC v. AT&T*, the Court concluded that the FCC’s forfeiture penalties pass constitutional muster because they are not binding. While the SEC could [immediately collect](#) its administrative penalties by garnishing violators’ wages or making deductions from their tax returns, recipients of FCC forfeiture orders are [only required to pay](#) once the Department of Justice (DOJ) prevails in a follow-on [de novo](#) jury trial (i.e., a trial without any deference to the FCC’s factual or legal conclusions) in federal district court.

*AT&T* may have several implications for Congress. Should Congress wish to empower agencies with administrative penalty authority, *AT&T* demonstrates a potential path for doing so consistent with the Seventh Amendment. The case also provides a framework for evaluating whether existing statutes establishing administrative penalty schemes are constitutional.

## The Seventh Amendment and *Jarkesy*

The [Seventh Amendment](#) preserves “the right of trial by jury” in “Suits at common law, where the value in controversy shall exceed twenty dollars.” The Supreme Court has explained that the term *suits at common law* embraces all actions that are “[legal in nature](#),” [meaning](#) that it is the type of action that courts of law, rather than courts of equity (which [historically](#) sat without a jury and typically awarded nonmonetary relief such as injunctions), would hear. The Court, however, has recognized an exception to the Seventh Amendment for cases involving “[public](#),” rather than “[private](#),” rights. While the Court has not “[definitively explained](#)” this *public rights exception*, it has recognized that the exception includes

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certain “[historic categories of adjudication](#),” such as revenue collection, foreign commerce, immigration, tribal relations, public lands, public benefits, and patents.

In *Jarkesy*, the Court [held](#) that a statutory scheme in which the SEC could impose civil penalties for securities fraud through an in-house administrative proceeding (with either an administrative law judge or the Commission itself acting as decisionmaker) violated the Seventh Amendment. The Court first [concluded](#) that the Seventh Amendment applied because the action was “legal in nature.” The remedy was the “[most important](#)” factor in this determination. Civil penalties, the Court [explained](#), are designed to punish wrongdoing rather than to restore the status quo between the parties; they are, therefore, quintessentially legal, rather than equitable, in nature. While the presence of penalties was enough to establish the legal nature of the claim, the nature of the cause of action “[confirmed](#)” the Court’s conclusion. While “[not identical](#),” the Court recognized a “[close relationship](#)” between securities fraud and historic common-law fraud. The Court further rejected the idea that the public rights exception applied to these SEC proceedings. The public rights exception, the Court [cautioned](#), “has no textual basis in the Constitution” and must be treated “with care” so as not to let it swallow the Seventh Amendment’s general rule. While the Court had in the past applied it to the adjudication of statutory standards that [had no similarity](#) to historical common-law causes of action, the Court [held](#) it did not apply to a statutory action that operates similar to common-law fraud.

## *FCC v. AT&T*

### Background

[Section 503\(b\)](#) of the Communications Act of 1934 (Communications Act), as amended, provides that anyone who “is determined by the Commission” to have “willfully or repeatedly” violated the Act or the FCC’s implementing regulations “shall be liable to the United States for a forfeiture penalty.” [Section 503\(b\)](#) authorizes the FCC to issue final orders assessing a forfeiture penalty, provided it has first notified the person of the alleged violations and given the person a chance to respond.

The recipient of a forfeiture order has “[two options](#).” First, it may pay the fine and [seek review in a federal appellate court](#). While an appellate court reviews any legal challenges to the order de novo, the appeals court sits without a jury and reviews the FCC’s factual determinations under a deferential standard. The recipient’s second option is to refuse payment and not appeal—in effect, “[to do nothing](#).” In the event of nonpayment, [Section 504](#) of the Communications Act directs the FCC to refer the matter to DOJ, which may bring a collection action in federal district court within [five years](#) of the order’s issuance. In such actions, the defendant is entitled to a “[trial de novo](#).” Unless DOJ prevails in [Section 504](#) trial, or until the recipient chooses to pay, [Section 504\(c\)](#) prohibits the Commission from using the unresolved forfeiture “to the prejudice of the person” in any other Commission proceedings.

In 2024, the FCC issued forfeiture orders to cellular telephone carriers [AT&T](#), [Verizon](#), [Sprint](#), and [T-Mobile](#) based on their treatment of customer location data. These carriers had contracts with [location aggregators](#), who collected consumers’ location data from the carriers and sold it to third parties that used the data to provide location-based services. Following [2018 news reports](#) revealing abuses of this location data, the FCC opened an investigation and ultimately determined that the carriers’ practices violated [Section 222](#) of the Communications Act and the FCC’s [implementing regulations](#), which require carriers to protect the privacy and security of this information. The FCC [assessed forfeiture penalties](#) of roughly \$80 million against T-Mobile, \$57 million against AT&T, \$47 million against Verizon, and \$12 million against Sprint.

Rather than await a potential [Section 504](#) suit by DOJ, the carriers [opted](#) to pay the forfeiture penalties and challenge them in federal appellate courts. In addition to [various](#) statutory and administrative law

arguments, the carriers maintained that the forfeiture proceedings violated the Seventh Amendment, citing *Jarkesy*. These challenges resulted in a circuit split. The U.S. Court of Appeals for the **Fifth Circuit** (Fifth Circuit) agreed with the carriers and vacated the FCC's forfeiture order against AT&T on Seventh Amendment grounds. The Fifth Circuit **concluded** that the "back-end Section 504 trial" did not meet the Seventh Amendment's demands because, even if DOJ decided to bring a Section 504 suit, by that time the FCC "would have already found the facts, interpreted the law, adjudged guilt, and levied punishment" without the involvement of a jury. The U.S. Courts of Appeals for the **Second Circuit** and **D.C. Circuit**, on the other hand, upheld the Commission's orders against Verizon, T-Mobile, and Sprint, reasoning that the prospect of a de novo trial under Section 504 satisfies the Seventh Amendment's demands.

## Supreme Court's Opinion

In an 8-1 **opinion**, the Supreme Court resolved the circuit split by holding that the FCC's forfeiture proceedings do not violate the Seventh Amendment. Writing for the Court, Chief Justice Roberts began by **explaining** that the Seventh Amendment does not "prescribe at what stage" of a legal dispute a jury trial is held so long as the trial occurs before legal rights and obligations are "conclusively 'ascertained and determined.'" Consequently, the Court reasoned, "nonjury adjudications making initial findings" are consistent with the Seventh Amendment provided they "are subject to *de novo* review in a subsequent jury trial."

Applying these principles, the Court **concluded** that the FCC's forfeiture orders are nonbinding and may therefore be issued without the involvement of a jury. Unlike in *Jarkesy*, where the SEC had **authority** to enforce its administrative penalties by garnishing an offender's wages or deducting the amount from their tax returns, the Communications Act, Justice Roberts **wrote**, "nowhere gives the Commission the authority to execute on a forfeiture order." The Court further observed that there are no penalties for nonpayment, interest does not accrue on the forfeiture amount, and Section 504(c) of the Communications Act prohibits the FCC from holding the existence of an unpaid forfeiture against a party unless a court has ordered payment. Furthermore, the Court explained, FCC's factual conclusions have "**no effect**" in a Section 504 suit. Consequently, the "**only legal effect**" of the FCC's forfeiture orders, the Court held, is to enable the DOJ to file a Section 504 suit.

The Court also **rejected** the idea that the FCC's forfeiture proceedings placed an "unconstitutional condition" on the carriers' exercise of their Seventh Amendment rights. **According** to the carriers, they faced an "impermissible choice: waive their jury right by voluntarily paying the forfeiture in exchange for guaranteed but deferential judicial review in the court of appeals; or decline to pay, and wait to make their case before a jury in an enforcement suit that may never come." The carriers emphasized the costly nature of choosing the second option, **explaining** that no carrier wants to "thumb its nose at its principal regulator" by defying a forfeiture order, nor do they want to risk such orders going unchallenged in light of the reputational harm and precedential effect they have. The Court **recognized** that the government "may not effectively deny constitutional rights by making it too costly to exercise them." In this instance, however, the Court **specified** that the carriers' Seventh Amendment rights never "attach[ed] in the first place" because the FCC's forfeiture proceedings were nonbinding and thus not a "[s]uit" under the Seventh Amendment. In any event, the Court **said**, it is "hard to see" how the carriers' alleged harms go beyond what it has already upheld in the criminal context, where defendants regularly face the "difficult choice[]" to "forgo a jury trial by pleading guilty."

Justice Thomas **dissented** from the Court's opinion. Justice Thomas concurred with the Court's Seventh Amendment analysis. Nevertheless, he would have reimbursed the carriers' penalty payments and given them an opportunity to respond to the forfeiture orders with a "**correct understanding of the law**." Justice Thomas wrote that the carriers paid the penalties under the "**good-faith**" belief that they were mandatory and faulted the Court for not granting the carriers any relief.

## Implications of the Decision

The Court's decision in *AT&T* appears to bring at least some clarity to the type of enforcement provisions that will pass muster under the [Seventh Amendment](#). Following the Supreme Court's 2024 decision in *Jarkesy*, some commenters argued that the opinion could have a significant effect on numerous statutory enforcement schemes across the federal bureaucracy. Justice Sotomayor, in her [dissent](#) in *Jarkesy*, cautioned that “more than 200 statutes authorizing dozens of agencies to impose civil penalties for violations of statutory obligations” may be called into question. If courts determined such enforcement schemes to be unconstitutional, Congress potentially would face consideration, to the extent that it desired continued enforcement of certain statutes, of how to [amend numerous agency organic acts](#) to align with *Jarkesy*'s requirements. The Court's decision in *AT&T* will also have implications for federal agencies and Congress.

### FCC Enforcement Actions

The direct impact of *AT&T* is that the FCC's forfeiture proceedings are constitutional and the agency may continue to enforce the Communications Act using the existing procedures under [Section 503](#). Thus, in this respect, agency practice may change little in response to the Supreme Court's ruling. The Supreme Court's decision may, however, [affect how parties respond](#) to forfeiture orders, potentially making regulated parties more willing to decline to pay forfeitures. The end result may lead to increased Article III litigation to enforce penalties for violations of the Communications Act.

As discussed above, parties have [two options](#) to contest a forfeiture order. A party may, as [AT&T and Verizon did](#), pay the forfeiture under protest and seek judicial review of the legality of the FCC's order. Alternatively, the party may refuse to pay and wait for the DOJ to file an enforcement action in district court to determine liability with the option for a jury trial. Following the Court's decision in *AT&T*, it may be that regulated entities increasingly choose the latter option. For example, Justice Thomas's dissent [implies](#) that parties subject to such orders prior to *AT&T* may have had a “[good faith belie\[f\]](#)” that they had an immediate legal obligation to pay. Now that the Court's decision clarifies that such orders have [no legal effect](#), it is possible that enforcement of the Communications Act will increasingly occur in Article III litigation as regulated entities may be more inclined to opt for a trial. At the same time, the decision does not necessarily signify that regulated parties will litigate all such actions. Regulated entities will have to weigh concerns beyond their jury right when deciding how to proceed—litigation in an Article III court is [expensive](#) and, as the parties established in the case, regulated entities may consider other business effects, such as [damage to reputation](#), when deciding how and whether to challenge an FCC forfeiture order.

### Enforcement at Other Agencies

Beyond the FCC, the ruling may have impacts for similar enforcement mechanisms at other executive agencies. One [amicus brief](#) submitted to the Supreme Court in *AT&T* [highlighted](#) “at least eleven other federal statutes” that provide for similar enforcement procedures. For example, the [Federal Power Act](#) provides that, when [enforcing violations concerning hydropower operations](#), the [Federal Energy Regulatory Commission](#) (FERC) may issue a penalty-assessment order following an informal hearing. If the regulated party refuses to pay within 60 days, FERC then may file [suit](#) in federal district court where the court shall “review de novo the law and the facts involved.” (These FERC procedures are currently subject to [litigation](#) by parties claiming, among other arguments, that they deny regulated parties' Seventh Amendment rights. The district court in that case [stayed](#) the proceedings while awaiting, among other decisions, the Supreme Court's opinion in *AT&T*.) Other agencies that use an enforcement model whereby an agency issues a penalty order but must file suit in court for a de novo trial include the [Department of](#)

Energy, the U.S. Fish and Wildlife Service, and the Department of Health and Human Services. To the extent that the agency in-house proceedings do “not reflect the ultimate determination of any fact” and still require the government “to prove its case to a jury,” these procedures may also pass constitutional muster. Just as discussed above with the FCC, following *AT&T*, it is possible that parties regulated by agencies under these enforcement systems may increasingly opt to refuse payment and wait to see if the government pursues an action in court.

If there is an increase in Article III litigation to enforce statutory programs, an additional consideration is the potential increased reliance on DOJ attorneys in agency enforcement. Many statutes, including the Communications Act, require DOJ to bring suit in federal court after the agency has determined that a violation has occurred, rather than authorizing the agency itself to file the lawsuit. When compared to administrative procedures that place enforcement priorities squarely in the hands of the regulatory agency, this appears to place additional control with DOJ. For example, it is possible that DOJ would decline to bring suit in certain instances—even if an agency has found a violation—as DOJ would have to assess its own available resources, evaluate the available evidence, and weigh its competing enforcement policy priorities before electing to pursue a claim on behalf of the requesting agency. Some commenters, however, have argued that these concerns may be misplaced, as the increase in DOJ activity could potentially be relatively small.

## “Waiver” Model of Administrative Enforcement

The Court’s *AT&T* decision appears to indicate that enforcement schemes that provide regulated entities a choice between review forums can also satisfy the Seventh Amendment, provided that one of the options involves a trial before a federal district court with the option for a jury. Following the *Jarkesy* opinion, commenters argued that the Seventh Amendment problems with administrative adjudication could be resolved if regulated parties were provided the option to either proceed before the agency adjudicator or remove the action to federal court where a jury could hear the case. These commenters noted that a party may waive his or her right to a jury trial in an Article III setting and that, if the regulated party opts for agency adjudication over an Article III court, that decision is akin to a jury waiver. In other words, the regulated entity, and not the government, would choose the juryless forum. Some Members of Congress, following the decision in *Jarkesy*, introduced legislation that would provide respondents facing agency adjudications an option to remove the proceedings to federal court. Proponents argued that this would provide regulated entities with the option to hear a matter with a more efficient and less expensive administrative adjudication proceeding or to secure the right to a jury.

*AT&T* appears to provide some support for proponents of this potential model. The Supreme Court upheld the FCC’s enforcement scheme that provided the option of paying the ordered forfeiture and seeking judicial review from a federal appeals court or refusing to pay and awaiting a potential trial de novo before a district court. The Court held that such a choice does not unconstitutionally coerce the party to waive its jury right. That the carriers had the option to pay the fine and seek appellate review did not affect their Seventh Amendment rights because the initial forfeiture order had no binding effect. If providing the option to voluntarily pay the forfeiture under protest and seek review through a federal appellate court satisfies the Seventh Amendment (as long as there is an option to proceed before a jury), this may arguably support the concept that it would be permissible for a party to choose to proceed in an administrative adjudication setting or choose to proceed in federal court in the first place.

## Considerations for Congress

As noted above, in the wake of *Jarkesy* some argued that Congress, if it wished to ensure compliance with the Seventh Amendment, might consider whether to change the adjudication procedures for numerous

federal agencies. In *AT&T*, the Court has established certain principles that Congress might use to draft enforcement mechanisms that protect litigants' Seventh Amendment rights.

Under *AT&T*, it appears that enforcement mechanisms whereby agencies investigate and hold informal hearings with regulated parties to determine compliance with statutory and regulatory requirements are permissible, so long as the government is “required to prove its case to a jury” before collecting penalties. This, arguably, permits an agency to develop facts and make preliminary assessments before forwarding the case to DOJ for ultimate enforcement. Following the Court's decision, Congress could, if it so chooses, emulate this enforcement scheme in future statutes or when revising existing laws to bring them in compliance with the Seventh Amendment. Congress and agencies may seek to ensure that an agency's initial determination does not “reflect the *ultimate determination of fact*” (emphasis added). Further, when crafting such laws, Congress could ensure that, before the ultimate decision is reached in an Article III court, **there is no penalty** for nonpayment, that no interest accrues, and that an agency cannot use the existence of such a nonbinding order against a party in other matters.

Congress could also consider alleviating the constitutional challenges associated with the administrative adjudication by **providing an option** for individuals subject to an enforcement action to remove the proceeding to federal court. As discussed in more detail above, this option **arguably** could cure some constitutional issues because proceedings would only occur outside of an Article III court if the litigants agree to the administrative forum.

Cases such as *Jarkesy* and *AT&T* may result in **increased agency dependence on DOJ** to bring enforcement actions. If Congress instead desired ultimate decisions on enforcement proceedings to lie with the regulatory agency charged with administering the statute, Congress could elect to provide specific agencies with **independent litigating authority**. In this manner, an agency with independent litigating authority would be able to bring suit in an Article III court without needing to rely on DOJ attorneys to pursue an action.

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