

IN THE SUPREME COURT OF THE UNITED STATES

No. 22-859

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

GEORGE R. JARKESY, JR., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPLICATION FOR LEAVE FOR THE PARTIES TO FILE
OPENING, RESPONSE, AND REPLY BRIEFS IN EXCESS OF THE WORD LIMITS

Pursuant to Rules 22 and 33.1(d) of the Rules of this Court, the Solicitor General, on behalf of the petitioner, respectfully requests that the parties be granted leave to file opening, response, and reply briefs in this case in excess of the word limits established by Rules 33.1(g)(v), (vi), and (vii). The Solicitor General requests leave for the petitioner to file an opening brief of no more than 19,000 words, for the respondents to file a response brief of no more than 19,000 words, and for the petitioner to file a reply brief of no more than 9000 words.

Respondents' counsel has authorized us to state that respondents consent to this application.

1. In 2013, the Securities and Exchange Commission (SEC or Commission) brought an administrative proceeding against respondents. Pet. App. 2a. An administrative law judge (ALJ) held an evidentiary hearing and issued a decision finding that respondents had violated various provisions of the securities laws. Id. at 155a-225a. Reviewing the ALJ's initial decision, the Commission likewise found that respondents had violated the securities laws. Id. at 71a-152a. The Commission imposed civil penalties and granted other relief. Id. at 152a-154a.

A divided panel of the Fifth Circuit granted respondents' petition for review, vacated the SEC's decision, and remanded the matter to the Commission for further proceedings. Pet. App. 1a-62a. The court issued three alternative holdings. First, the court held that Congress had violated the Seventh Amendment by empowering the Commission to bring certain administrative proceedings seeking civil penalties. Id. at 5a-20a. Second, the court held that Congress had improperly delegated legislative power to the SEC by granting the agency unconstrained authority to choose in particular cases to seek civil penalties by instituting administrative proceedings rather than filing suit in district court. Id. at 21a-28a. Finally, the court held that Congress had violated Article II by making the Commission's ALJs removable by the Commission "only for good cause established and determined by

the Merit Systems Protection Board” (Board), 5 U.S.C. 7521(a).
Pet. App. 25a-30a.

On June 30, 2023, this Court granted the SEC’s petition for a writ of certiorari. The petition presents three questions: (1) whether statutory provisions that empower the SEC to initiate and adjudicate administrative enforcement proceedings seeking civil penalties violate the Seventh Amendment, (2) whether statutory provisions that authorize the SEC to choose to enforce the securities laws through an agency adjudication instead of filing a district court action violate the nondelegation doctrine, and (3) whether Congress violated Article II by granting for-cause removal protection to ALJs in agencies whose heads enjoy for-cause removal protection.

3. The three questions presented involve multiple issues of constitutional law, implicating the Seventh Amendment right to trial by jury, the nondelegation doctrine, and the President’s removal power. The parties also must address what statutory provisions, if any, the Court should sever and disregard in order to remedy any constitutional violation.

Given the multiple questions presented and the complexity of the legal issues involved, the word limits provided by this Court’s Rules would be inadequate to allow for a thorough airing of the issues. The Solicitor General therefore requests leave for the petitioner to file an opening brief of no more than 19,000 words, for the respondents to file a response brief of no more than 19,000

words, and for the petitioner to file a reply brief of no more than 9000 words.

The Court has previously permitted parties to file briefs of similar or greater length in cases of particular complexity. See, e.g., Biden v. Nebraska, No. 22-506 (2023) (consolidated opening brief of 17,000 words and consolidated reply brief of 9000 words); Haaland v. Brackeen, No. 21-376 (2022) (consolidated opening briefs of 20,000 words each, consolidated response briefs of 22,500 words each, and consolidated reply briefs of 8000 words each); Trump v. Hawaii, No. 17-965 (2018) (opening and response briefs of 20,000 words each and reply brief of 8000 words); Trump v. International Refugee Assistance Project, No. 16-1436 (2017) (consolidated opening brief of 22,500 words and consolidated reply brief of 10,000 words); United States v. Texas, No. 15-674 (2015) (opening and response briefs of 20,000 words each and reply brief of 8000 words); Zubik v. Burwell, No. 14-1418 (2015) (consolidated opening briefs of 20,000 words each, consolidated response brief of 22,500 words, and consolidated reply briefs of 8000 words each).

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

JULY 2023