

Nos. 25-406 & 25-567

In the Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Petitioners,

v.

AT&T, INC.,
Respondent.

VERIZON COMMUNICATIONS INC.,
Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Respondents.

*On Writ of Certiorari to the United States Courts of
Appeals for the Fifth and Second Circuits*

**BRIEF OF THE CATO INSTITUTE AS *AMICUS
CURIAE* IN SUPPORT OF AT&T, INC. AND
VERIZON COMMUNICATIONS INC.**

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QUESTION PRESENTED

Whether the Communications Act provisions that govern the FCC's assessment and enforcement of monetary forfeitures are consistent with the Seventh Amendment and Article III.

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INTEREST OF *AMICUS CURIAE*¹

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Toward that end, Cato's Robert A. Levy Center for Constitutional Studies publishes books and studies about legal issues, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs in constitutional law cases. Cato's interest in this case arises from its commitment to preserving the jury's constitutionally assigned role as a vital check on government abuse.

¹ Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Seventh Amendment secures the civil jury trial as a protection against the arbitrary exercise of governmental power. American juries have always been more than mere factfinders; they serve as a check on governmental abuse, one that the Founders viewed as paramount to the preservation of liberty.

The Federal Communications Commission's position undermines that constitutional guarantee. Under the Communications Act, the FCC may adjudicate violations of federal law in-house and issue forfeiture orders imposing massive civil penalties. In these consolidated cases, the FCC imposed over \$57 million in penalties against AT&T and more than \$48 million against Verizon for alleged violations of federal data breach laws in 2018 and 2019. AT&T and Verizon Br. 11. Those are *final* orders and are not mere advisories. They declare regulated parties "liable" for violations of law, impose binding monetary obligations, and carry immediate consequences. Yet they are issued without a jury, by executive branch officials who serve simultaneously as prosecutor, factfinder, and adjudicator.

The companies here face a dilemma: to preserve the *possibility* of a jury trial they must defy a final agency order, refuse to pay the penalties, and wait for the federal government to collect through a suit in district court. *See* 47 U.S.C. § 504(a). Doing so invites more regulatory scrutiny and, with it, additional

reputational and financial harm. Alternatively, they can pay the penalties and proceed directly to a court of appeals, where review is deferential to the agency and conducted without a jury.

Thus, in practical terms, there is no real choice. Such trials never take place because no recipient of these orders can realistically risk the additional consequences of defying the Commission. The right to a trial here is illusory—unavailable at the time the penalty is imposed and impracticable afterwards.

The implications extend far beyond the FCC and telecommunications. The question before the Court is whether the jury trial right remains for the millions of Americans whose businesses are regulated by the federal government. If an agency may determine liability and assess massive civil penalties without a jury trial, the Seventh Amendment is reduced to a theoretical entitlement.

This Court should affirm the decision below of the Fifth Circuit and reverse that of the Second Circuit. In doing so, it should hold that when an agency proceeding (1) culminates in final agency action, and (2) is treated as a “proceeding for enforcement” that preserves the timeliness of penalties under federal law, that proceeding constitutes the adjudication of an action in debt, and the jury right attaches.

ARGUMENT

I. THE FRAMERS ENACTED THE SEVENTH AMENDMENT TO PREVENT LEGISLATIVE EFFORTS TO NARROW THE JURY RIGHT.

The Seventh Amendment was adopted at the Founding for two key reasons. First, it ensured that official government actions would be subject to the scrutiny of ordinary citizens. And second, it ensured that those ordinary citizens, not government officials, would serve as the final arbiters of questions of fact. The amendment provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

U.S. CONST. amend. VII.

This safeguard against oppression is central to the constitutional design of our justice system. Given the importance of this right, this Court has said that judges must resolve any doubt in favor of preserving it. *See Beacon Theatres v. Westover*, 359 U.S. 500, 510 (1959) (“discretion is very narrowly limited and must, wherever possible, be exercised to preserve [a] jury trial.”).

The jury trial is deeply rooted in American law. The right long pre-dated the Seventh Amendment. “Legal

writers and political theorists who were widely read by the colonists were firmly of the opinion that trial by jury in civil cases was an important right of freemen,”² and the Framers understood this right to be a vital check on state power.³ Thomas Jefferson described the right to a jury trial as “the only anchor, ever yet imagined by man, by which a government can be held to the principles of its constitution.”⁴ James Madison referred to this right as being “as essential to secur[ing] the liberty of the people as any one of the pre-existent rights of nature.”⁵

These convictions were formed through colonial Americans’ experience. As this Court recently noted, “When the English began evading American juries by siphoning adjudications to juryless admiralty, vice admiralty, and chancery courts, Americans condemned Parliament for ‘subvert[ing] the rights and liberties of the colonists.’” *SEC v. Jarkesy*, 603 U.S. 109, 121 (2024) (internal citation omitted). The Stamp Act Congress called trial by jury “the inherent and invaluable right of every British subject in these

² Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 MINN. L. REV. 639, 653–54 (1973).

³ Kenneth S. Klein, *The Validity of the Public Rights Doctrine in Light of the Historical Rationale of the Seventh Amendment*, 21 HASTINGS CONST. L.Q. 1013, 1017 (1994) (collecting Founders’ statements).

⁴ Letter from Thomas Jefferson to Thomas Paine (July 11, 1789), <https://tinyurl.com/2efzm634> (punctuation modernized).

⁵ 1 ANNALS OF CONG. 454 (Joseph Gales ed., 1789) (discussing civil cases).

colonies.”⁶ The Declaration of Independence accused King George of “[d]epriving us in many cases, of the benefits of Trial by Jury.”⁷

Accordingly, members of the Founding Generation were united in their insistence on a civil jury trial guarantee. “One of the strongest objections originally taken against the [then-proposed] constitution of the United States, was the want of an express provision securing the right of trial by jury in civil cases.” *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 446 (1830) (Story, J.). George Mason and Elbridge Gerry cited that omission as a reason they refused to sign the Constitution.⁸ Antifederalist concern was so intense that Alexander Hamilton reassured readers in Federalist No. 83 that “[t]he friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury.” THE FEDERALIST No. 83 (Alexander Hamilton).

The Constitution’s Framers responded to that concern by adopting the Seventh Amendment. Enforcing the protections of that amendment, this Court has repeatedly recognized the enduring

⁶ Declaration of Rights of the Stamp Act Congress of 1765, reprinted in 2 THE FOUNDERS’ CONSTITUTION art. 1, § 7, cl. 1, doc. 3, <https://tinyurl.com/4swbm77z>.

⁷ *Declaration of Independence: A Transcription*, NAT’L ARCHIVES, <https://tinyurl.com/492ckm2z>.

⁸ Wolfram, *supra*, at 660 n.59 & 667.

importance of civil jury trials. Most recently, in 2024, it reaffirmed that the jury trial right is “of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right has always been and should be scrutinized with the utmost care.” *Jarkesy*, 603 U.S. at 121 (internal quotation marks omitted). Indeed, “most every current Member of this Court at one time or another, [has] acknowledged that the jury-trial right ‘stands as one of the Constitution’s most vital protections against arbitrary government.’” *Id.* at 162 (Gorsuch, J., concurring) (quoting *United States v. Haymond*, 588 U.S. 634, 637 (2019) (plurality opinion)).

In sum, both the Framers and this Court have recognized “the right of trial by jury in civil cases [as] an important bulwark against tyranny and corruption, a safeguard too precious to be left to the whim of the sovereign, or . . . to that of the judiciary.” *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 343 (1979). Courts therefore must remain vigilant against governmental efforts to impair the jury right by mischaracterizing the nature of the relief the government seeks. *See Beacon Theatres*, 359 U.S. at 510–11.

II. THE FCC’S IMPOSITION OF PENALTIES WITHOUT A JURY TRIAL IS UNCONSTITUTIONAL.

The jury’s historic role was to stand between the government and its target before liability was conclusively determined in a legal action. Allowing agencies to impose binding judgments first, and to

offer only a speculative jury trial only later, reverses that constitutional order.

The Seventh Amendment is violated at the moment the government conclusively determines legal liability and punishment without a jury. A later, optional enforcement suit cannot retroactively cure that violation. At the Founding, the jury's role was antecedent—not remedial.

The FCC conclusively determines legal liability and punishment without a jury. The Communications Act makes FCC forfeiture orders final and binding. Under that Act, once the Commission determines a violation, the party “shall be liable to the United States for a forfeiture penalty.” 47 U.S.C. § 503(b)(1). That is a conclusive determination of wrongdoing. If a carrier fails to timely pay the penalty, it becomes a debt to the United States. *See id.* § 504(a). The FCC investigates, makes factual findings, adjudicates liability, and imposes a monetary penalty—all without a jury.

An FCC forfeiture order initiates serious, concrete harm. It is final agency action for APA purposes. *See Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). It must be disclosed in securities filings and applications for government contracts. Verizon Pet. Cert. 24. It publicly brands the carrier a violator of federal law and can be invoked by the Commission again as evidence of a “history of prior offenses” in future enforcement. 47 U.S.C. § 503(b)(2)(E). The Commission claims further power to consider the underlying facts of a

purported violation in other proceedings. *See Verizon Pet. Cert. App. 37a.* Moreover, even if a forfeiture order is challenged, a carrier must still account for it as a likely expense, and creditors must do the same. These consequences attach immediately, long before any hypothetical jury trial might occur, and even if no such trial ever occurs.⁹

As a practical matter, the Communications Act presents regulated parties a Hobson's choice. To ensure judicial review of an FCC forfeiture order, a carrier must pay the penalty and proceed to the court of appeals, where no jury is available and review is confined to the administrative record under deferential¹⁰ APA standards. *See* 47 U.S.C. §§ 402(a); 503(b)(3)(A); 28 U.S.C. § 2347(a). Alternatively, to preserve the possibility of a jury trial, the carrier must defy a final agency order, incur immediate consequences, and wait—potentially for years¹¹—to see whether the Department of Justice elects to bring a Section 504 collection action. 47 U.S.C. §§ 402(a), 503(b)(3)(B), 504(a).

And even that latter, risky option is illusory. Section 504 jury trials against regulated entities

⁹ Further, as described *infra*, the proceeding itself satisfies the statute of limitations as civil penalty “enforcement” in constitutionally significant ways. *See* 28 U.S.C. § 2462.

¹⁰ *See* 5 U.S.C. § 706(2).

¹¹ The federal government has five years to commence a suit or proceeding after a claim accrues. 28 U.S.C. § 2462.

appear to be nonexistent.¹² Telecommunications carriers frequently appear before the Commission and depend on its approval in a wide range of matters. These include obtaining, renewing, and transferring licenses necessary to operate. As regulated parties, they also risk further post-forfeiture regulatory scrutiny. And given the FCC's broad discretion in investigating and penalizing regulated parties, including determining the number of violations¹³ and the amount¹⁴ of the fine, defying the agency carries tremendous risk. Indeed, the Commission asserted in its order against Verizon that it could have imposed fines orders of magnitude higher, claiming to have found tens of millions of violations. Verizon Pet. Cert. App. 116a–17a. Thus, carriers cannot realistically avail themselves of a jury trial as severe legal, regulatory, practical, and reputational consequences would follow from openly defying a final agency order.

¹² See Brief of Amicus Chamber of Commerce at 16, Verizon Commc'ns Inc. v. FCC, No. 25-567 (U.S. Dec. 12, 2025) (“[T]he FCC fails to point to a single Section 504(a) jury trial ever, and it is not clear that there has ever been one.”).

¹³ See Verizon Pet. Cert. App. 114a–15a (FCC order claiming the discretion to determine the number of violations, including by treating a single act as many violations) (citing 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(b)); *e.g.*, Verizon Pet. Cert. at 10 (“Instead of finding a single violation, the Commission divined 63 continuing violations.”).

¹⁴ In determining the amount, the Commission shall consider “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.” 47 U.S.C. § 503(b)(2)(E).

The statutory scheme operates not as a genuine preservation of the jury right, but as a mechanism that predictably induces waiver.

The Seventh Amendment is not satisfied by the illusory offer of a speculative, back-end jury trial only after an agency has already found the facts, adjudged guilt, and imposed punishment. This Court should therefore hold this statutory regime unconstitutional.

III. THE GOVERNMENT CANNOT HAVE IT BOTH WAYS: “ENFORCEMENT” FOR § 2462, “PRELIMINARY” FOR THE SEVENTH AMENDMENT.

The government’s position in this case reveals a structural inconsistency with constitutional significance. It advances a jury-depriving and paradoxical legal theory: that agency forfeiture proceedings are sufficiently final to preserve civil penalties for statute-of-limitations purposes, *see* 28 U.S.C. § 2462 (imposing a five-year statute of limitations on “enforcement of” civil penalties from the time “the claim first accrued”), yet merely “initial” or preliminary for purposes of the Seventh Amendment. *See* Gov’t Br. 2, 3, 9.

The Seventh Amendment guarantees that in “[s]uits at common law, . . . the right of trial by jury shall be preserved.” This Court reaffirmed in *Jarkesy* that “[a]ctions by the Government to recover civil penalties under statutory provisions . . . historically ha[d] been viewed as [a] type of action in debt requiring trial by jury.” *Jarkesy*, 603 U.S. at 122

(citation omitted). At common law, actions of debt and statutory penalty actions were legal claims triable by jury and subject to legislatively prescribed limitation periods—typically six years under the English Limitation Act of 1623 and its American analogues.¹⁵ Section 2462 reflects that same tradition of repose for legal penalty claims. If it is the FCC proceeding that preserves penalties under Section 2462—not the later DOJ collection action under Section 504—then the FCC proceeding functions as the enforcement of a common-law-type penalty claim. A jury right must therefore attach.

For statute-of-limitations purposes, the government necessarily treats the Commission’s forfeiture proceeding as a “proceeding for the enforcement” of a civil penalty within the meaning of Section 2462. Otherwise, many regulatory penalties would be untimely if the only relevant enforcement event were a later Section 504 collection suit. The government presumes that the administrative process culminating in a forfeiture order is itself an enforcement action—one that fixes liability and imposes a monetary obligation on the regulated party. Yet when confronted with a Seventh Amendment challenge, the government retreats to the position that the FCC’s adjudication is “initial” and has no

¹⁵ 21 Jam. I, ch. 16 (1623) (Eng.). This statute was the model upon which most American statutes of limitation are based. See *Wood v. Carpenter*, 101 U.S. 135, 139 (1879).

constitutionally relevant enforcement effect. *See* Gov't Br. 2, 3, 9.

Verizon's assessments illustrate the point. The alleged violations ended by March 30, 2019. *See* AT&T and Verizon Br. 11. The Commission did not issue its final forfeiture order until April 28, 2024. *See id.* at 12. This Court held in *Gabelli v. SEC* that Section 2462's "five-year clock begins to tick" when the violation "is complete." 568 U.S. 442, 444–45, 454 (2013). If Section 2462 runs from the date the alleged violation ended, any Section 504 collection suit filed after March 30, 2024 would be time-barred. The government can avoid that consequence only by treating the FCC's administrative forfeiture proceeding as the operative enforcement event for civil penalties statute-of-limitations purposes.

But if the administrative proceeding is "enforcement" sufficient to preserve a penalty claim, it must be treated as a civil penalty suit that requires an independent judge and jury. *See Jarkesy*, 603 U.S. at 154. This Court should reject the government's position that the same adjudication can be final enough to save stale penalties, yet merely preliminary when the Seventh Amendment is invoked.

This Court should adopt a straightforward rule: When an agency proceeding (1) culminates in final agency action under the APA, and (2) is treated as a "proceeding for enforcement" that preserves the timeliness of penalties under Section 2462, that proceeding constitutes the adjudication of an action in

debt over a legal claim for money. A proceeding that determines that a party “shall be liable,” specifies the amount owed, directs payment, and satisfies the federal statute governing penalty enforcement cannot be dismissed as merely “initial” or advisory. It is the functional analogue of a common-law action in debt—precisely the type of suit the Seventh Amendment reserves to a jury. *See id.* at 154.

IV. UPHOLDING THIS STATUTORY REGIME WOULD INCENTIVIZE ABUSIVE TACTICS ACROSS THE ADMINISTRATIVE STATE.

The question presented in these consolidated cases extends far beyond the FCC and the telecommunications industry. If the Commission’s forfeiture scheme is upheld, it will validate a workaround that allows administrative agencies to impose punitive monetary sanctions without a jury, provided they merely reserve the *possibility* of a later, discretionary collection action. It would entrench a model of administrative enforcement that systematically pressures regulated parties to surrender their Seventh Amendment rights, while simultaneously expanding agencies’ ability to impose massive monetary sanctions without meaningful judicial constraint.

Under this model, agencies can threaten ruinous penalties, secure in the knowledge that they will face merely deferential judicial scrutiny—if any—and will do so only after payment and waiver of the right to a jury. This dynamic encourages over-enforcement and

blurs the constitutional line between prosecutor and judge, creating a serious Article III problem. Agencies are incentivized to stretch statutory interpretations, inflate counts of “violations,” and ratchet penalties upward.

Moreover, treating the initial administrative forfeiture proceedings as the relevant “proceeding for enforcement” under Section 2462 substantially dilutes the statute’s traditional repose function. It permits the government to preserve penalty claims through internal agency action while postponing the jury-triable judicial enforcement action far beyond the original five-year accrual period.

Accepting that structure here would invite its expansion elsewhere, effectively creating a broad exception to the Seventh Amendment for civil penalties administered by executive agencies. That result would be in direct tension with this Court’s recent reaffirmation in *Jarkesy* that civil monetary penalties designed to punish or deter are paradigmatic legal remedies, historically tried by juries. Indeed, agencies could easily insulate even the most punitive enforcement programs from meaningful jury involvement by structuring penalties as immediately binding obligations, while reserving formal collection to a later, discretionary action.

The real-world effect of the FCC’s scheme is to hollow out the civil jury’s role as a check on government power. The Seventh Amendment was adopted to ensure that ordinary citizens stand

between the government and the imposition of punitive sanctions. A system that conditions access to that protection on regulatory defiance, potential retribution, and years of uncertainty does not preserve the jury trial right; it penalizes its exercise.

This Court should reject the government's attempt to repackage coercive waiver as voluntary settlement. Relegating juries to a remote and discretionary backstop cannot be reconciled with the Seventh Amendment as understood at the Founding or as reaffirmed by this Court in *Jarkesy*.

CONCLUSION

For the foregoing reasons, this Court should affirm the Fifth Circuit's decision and reverse that of the Second Circuit.

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