

No. 25-406, No. 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 Writs Of Certiorari To The United States  
Courts Of Appeals For The Fifth and Second Circuits*

**BRIEF OF PACIFIC LEGAL  
FOUNDATION AS AMICUS CURIAE  
IN SUPPORT OF AT&T, INC. AND  
VERIZON COMMUNICATIONS INC.**

OLIVER J. DUNFORD  
Pacific Legal Foundation  
4400 PGA Blvd.  
Suite 307  
Palm Beach Gardens, FL  
33410

ALLISON D. DANIEL  
*Counsel of Record*  
JOSHUA M. ROBBINS  
Pacific Legal Foundation  
3100 Clarendon Blvd.  
Suite 1000  
Arlington, VA 22201  
Telephone: (202) 888-6881  
ADaniel@pacificlegal.org

*Counsel for Amicus Curiae Pacific Legal Foundation*

---

---

## TABLE OF CONTENTS

Interest of Amicus Curiae .....	1
Introduction and Summary of the Argument.....	2
Argument .....	3
I.    The FCC’s punitive monetary penalties implicate private rights and therefore require Article III adjudication and a civil jury.....	3
A.    The Commission’s forfeiture orders adjudicate legal liability and impose punitive monetary penalties.....	4
B.    The claims and remedies here are closely analogous to common-law actions .....	5
C. <i>Atlas Roofing</i> cannot justify administrative adjudication of punitive monetary liability for common-law-analogous claims.....	7
II.   The Communications Act’s back-end collection suit does not satisfy Article III or the Seventh Amendment and it renders the jury-trial right illusory in practice .....	9
A.    A later collection suit cannot cure a constitutional violation that occurs when the agency adjudicates liability and imposes punishment.....	9
B.    The pay-or-refuse choice makes the jury right contingent and often irrational to exercise. ....	10
C.    For many parties, especially smaller businesses and individuals, Article III adjudication and the jury right are illusory in practice .....	13
Conclusion.....	18

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>AT&amp;T, Inc. v. FCC</i> , 149 F.4th 491 (5th Cir. 2025).....	2, 5, 6, 10, 14
<i>Atlas Roofing Co., Inc. v. Occupational Safety &amp; Health Rev. Comm’n</i> , 430 U.S. 442 (1977) .....	7, 8
<i>Axon Enterprise, Inc. v. FTC</i> , 598 U.S. 175 (2023) .....	12, 13
<i>Curtis v. Loether</i> , 415 U.S. 189 (1974) .....	6
<i>Ellingburg v. United States</i> , No. 24-482, 607 U.S. ____ (U.S. Jan. 20, 2026) .....	4
<i>FCC v. Fox Television Stations, Inc.</i> , 567 U.S. 239 (2012) .....	14
<i>Free Enterprise Fund v. Public Company Accounting Oversight Board</i> , 561 U.S. 477 (2010) .....	10
<i>FTC v. Standard Oil Co. of Cal.</i> , 449 U.S. 232 (1980) .....	12
<i>Granfinanciera S.A. v. Nordberg</i> , 492 U.S. 33 (1989) .....	3, 5, 7, 8
<i>Jake’s Fireworks, Inc. v. Consumer Product Safety Commission</i> , 105 F.4th 627 (4th Cir. 2024), <i>cert. denied</i> , 145 S. Ct. 2700 (2025) .....	14

<i>Koontz v. St. Johns River Water Management District</i> , 570 U.S. 595 (2013) .....	11, 12
<i>Leachco, Inc. v. Consumer Product Safety Commission</i> , 103 F.4th 748 (10th Cir. 2024), <i>cert. denied</i> , 145 S. Ct. 1047 (2025) .....	15, 16
<i>Sackett v. EPA</i> , 566 U.S. 120 (2012) .....	11, 12
<i>SEC v. Cochran</i> , 20 F.4th 194 (5th Cir. 2021) .....	13
<i>SEC v. Jarkesy</i> , 603 U.S. 109 (2024) .....	3, 5, 6, 7, 8, 9
<i>Stern v. Marshall</i> , 564 U.S. 462 (2011) .....	5, 8
<i>Tilton v. SEC</i> , 824 F.3d 276 (2d Cir. 2016).....	13
<i>Tull v. United States</i> , 481 U.S. 412 (1987) .....	3, 4, 6, 7
<i>U.S. Army Corps of Engineers v. Hawkes Co.</i> , 578 U.S. 590 (2016) .....	11, 12
<i>Verizon Commc'ns Inc. v. FCC</i> , 156 F.4th 86 (2d Cir. 2025) .....	2, 9
<b>Statutes</b>	
47 U.S.C. § 222.....	4
47 U.S.C. § 401(a) .....	5
47 U.S.C. § 503(b) .....	4, 5, 6
47 U.S.C. § 503(b)(2)(B) .....	4
47 U.S.C. § 503(b)(2)(E) .....	4, 7, 13

47 U.S.C. § 503(b)(4) .....2, 5

47 U.S.C. § 504(a) ..... 10

**Other Authorities**

47 C.F.R. § 64.2010(a).....6

Breger, Marshall, *Short Circuiting the  
Administrative Judiciary: A Response to  
Linda Jellum*, 101 Tex. L. Rev. Online  
173 (2023) ..... 13

## INTEREST OF AMICUS CURIAE<sup>1</sup>

Founded in 1973, Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt California corporation that litigates nationwide to vindicate individual liberty, private property, and separation-of-powers principles. PLF has extensive experience challenging administrative enforcement regimes that combine investigation, prosecution, adjudication, and punishment within the Executive Branch.

PLF files this brief to provide the Court with constitutional and practical context about why punitive monetary penalties that resemble traditional actions at common law must be adjudicated by Article III courts with juries. PLF is currently litigating related issues in multiple matters challenging agency adjudication of private-rights disputes and punitive penalties, including *American Tripoli v. U.S. Department of Labor and the Federal Mine Safety and Health Review Commission*, No. 25-1349 (8th Cir.); *Serpe v. Federal Trade Commission*, No. 0:24-cv-61939 (S.D. Fla.); and *Joe Manis v. U.S. Department of Agriculture*, No. 25-2001 (4th Cir.). These cases reflect a recurring problem: when the government can impose binding liability and punishment administratively, constitutional guarantees become contingent and, for many ordinary Americans, practically out of reach.

---

<sup>1</sup> No party's counsel authored any part of this brief. No person or entity, other than Amicus Curiae and its counsel, paid for the brief's preparation or submission.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

These consolidated cases present a straightforward question after this Court's decision in *SEC v. Jarkesy*: may a federal agency adjudicate legal liability and impose massive punitive monetary penalties in house, without an Article III judge or a civil jury, on the theory that the target could refuse to pay and await a later collection suit?

The Communications Act's forfeiture scheme allows the Federal Communications Commission to investigate regulated parties, issue a charging document, consider only written objections, and then enter a final forfeiture order that adjudges a violation and fixes a multi-million-dollar penalty. *See* 47 U.S.C. § 503(b)(4). In these cases, the Commission imposed \$57 million in fines on AT&T and \$47 million on Verizon based on alleged failures to safeguard customers' location information. *AT&T, Inc. v. FCC*, 149 F.4th 491, 496-97 (5th Cir. 2025); *Verizon Commc'ns Inc. v. FCC*, 156 F.4th 86, 91-92 (2d Cir. 2025).

The Fifth Circuit held that this scheme violates both Article III and the Seventh Amendment. *AT&T*, 149 F.4th at 501-03. The Second Circuit disagreed, reasoning that Verizon could have refused to pay and preserved the opportunity for a trial de novo in a later collection action. *Verizon*, 156 F.4th at 106-08.

PLF's brief focuses on two principal points. First, the Commission's pursuit of punitive monetary penalties for common-law-analogous wrongdoing implicates private rights and seeks a legal remedy. Under the Court's jurisprudence, these features trigger the civil-jury right and require adjudication by an Article III

court. See *SEC v. Jarkesy*, 603 U.S. 109 (2024), *Granfinanciera S.A. v. Nordberg*, 492 U.S. 33 (1989), and *Tull v. United States*, 481 U.S. 412 (1987). Second, the possibility of a later collection suit does not satisfy the Constitution. Article III and the Seventh Amendment are violated when the agency itself adjudicates guilt and imposes punishment. A later suit cannot retroactively supply an independent judge and jury for the determination that matters.

Under the Second Circuit’s reasoning, the jury right becomes contingent on nonpayment and the government’s decision to sue. A constitutional protection that depends on a defendant’s willingness to incur additional financial and strategic exposure is illusory in practice. Article III and the Seventh Amendment require that the determination of liability for punitive monetary sanctions occur in court before a jury—not after the Executive has acted.

## ARGUMENT

### I. The FCC’s punitive monetary penalties implicate private rights and therefore require Article III adjudication and a civil jury

*Jarkesy* reaffirmed a settled principle: when the government seeks to impose a punitive monetary penalty through a claim that is legal in nature, the Seventh Amendment preserves the right to a jury trial, which requires adjudication in Article III courts. 603 U.S. 109, 121-35 (2024). Whether these constitutional guarantees apply turns on “the substance of the suit,” not the label Congress or an agency attaches to it. *Id.* at 135.

**A. The Commission’s forfeiture orders adjudicate legal liability and impose punitive monetary penalties**

Congress authorized the FCC to enforce 47 U.S.C. § 222, which imposes a duty on telecommunications carriers to protect customer information held on their proprietary networks, through monetary “forfeiture penalties.” 47 U.S.C. § 503(b). These sanctions impose substantial monetary liability for past violations of federal law and function as punitive penalties. *See Tull*, 481 U.S. at 422.

Whether a monetary sanction constitutes punishment turns on how the statute operates in practice. This Court recently reaffirmed that principle in *Ellingburg v. United States*, No. 24-482, 607 U.S. \_\_\_ (U.S. Jan. 20, 2026). There, the Court held that restitution under the Mandatory Victims Restitution Act is “plainly criminal punishment” for purposes of the Ex Post Facto Clause, even though restitution also serves compensatory purposes. *Ibid.* The Court emphasized that restitution is imposed at sentencing, codified in Title 18’s criminal provisions, predicated on conviction, and enforced by the Government rather than by private parties. *Ibid.* The statutory text and structure controlled the analysis.

The same structural features are present here. The FCC’s forfeiture regime authorizes the sovereign to impose substantial monetary sanctions for alleged statutory violations, adjudicated and enforced by the Government itself. 47 U.S.C. § 503(b)(2)(B). Such sanctions impose binding monetary liability on private parties and serve traditional punitive aims of deterrence and retribution. *Id.* § 503(b)(2)(E).

The Communications Act provides for judicial enforcement of Commission orders in federal district court. *See* 47 U.S.C. § 401(a). But for forfeitures under § 503(b), the Commission first adjudicates liability internally. Under the route the Commission used against both AT&T and Verizon, the agency issues a Notice of Apparent Liability, receives written objections, and then issues a forfeiture order if it disagrees. *Id.* § 503(b)(4). A forfeiture order is not an advisory opinion. It represents the Commission’s final determination that the target violated federal law and owes the United States a specified sum. *See AT&T*, 149 F.4th at 503-04 (describing how the Commission “adjudged a carrier guilty” and “levied fines” in-house).

The Commission is not merely setting prospective rules for future conduct; it is imposing retrospective liability and punishment. That is the traditional work of courts. *Stern v. Marshall*, 564 U.S. 462, 484 (2011) (Article III protects liberty by preventing the political branches from aggrandizing power to themselves at the judiciary’s expense).

**B. The claims and remedies here are closely analogous to common-law actions**

Because the Commission seeks punitive monetary liability, both Article III and the Seventh Amendment require application of the historical test set out in *Jarkesy* to determine whether the claim and remedy are analogous to suits at common law. *Jarkesy* instructs courts to ask (1) whether the cause of action resembles a claim historically tried at law and (2) whether the remedy is legal or equitable. 603 U.S. at 122-26 (citing *Granfinanciera*, 492 U.S. at 42). Both factors point decisively in the same direction here.

First, the Commission’s theory of liability closely resembles traditional legal claims for breach of duty. The agency alleges that the carriers failed to take “reasonable measures” to protect sensitive customer information from unauthorized access. 47 C.F.R. § 64.2010(a); *AT&T*, 149 F.4th at 499-501 (describing the Commission’s “unreasonable safeguards” theory). That formulation tracks classic negligence principles: a duty imposed by law, breach of that duty by unreasonable conduct, and resulting harm or risk. See *Jarkesy*, 603 U.S. at 139 (explaining that the Seventh Amendment applies to modern statutory claims that are “akin to common law claims”). At common law, actions sounding in negligence, breach of duty, or other tort-based misconduct were paradigmatic suits at law tried before juries. See *Curtis v. Loether*, 415 U.S. 189, 195 (1974).

The Commission’s claim also bears resemblance to common-law actions in debt. When the Government seeks to recover a fixed monetary sum for violation of legal obligations, the action historically lay in debt—a form of action long understood to require a jury. *Tull*, 481 U.S. at 418-20. The forfeiture orders here do precisely that: they adjudicate liability and demand payment of a specified monetary sum to the United States. That is not prospective rulemaking or equitable supervision. It is the imposition of legal liability for past conduct.

Second, the remedy is quintessentially legal. As discussed above, a monetary penalty designed to punish and deter is “a form of relief that only courts of law could provide.” *Tull*, 481 U.S. at 422; *Jarkesy*, 603 U.S. at 134. The forfeitures authorized under 47 U.S.C. § 503(b) are not compensatory. They are pay-

able to the sovereign, calibrated to deter future violations, and imposed only after a finding of wrongdoing. *Id.* § 503(b)(2)(E). As in *Jarkesy*, such penalties “are designed to punish or deter” the wrongdoer, making them legal in nature. 603 U.S. at 123-25.

Nor does the absence of a perfect historical twin defeat the jury right. The Seventh Amendment extends to statutory claims that are “analogous to common-law causes of action ordinarily decided in English law courts in the late 18th century.” *Granfinanciera*, 492 U.S. at 42. It does not require an “abstruse historical search” for a precise match, particularly when the remedy is “more important.” *Tull*, 481 U.S. at 421 (cleaned up). Where, as here, the Government seeks punitive monetary relief for alleged legal violations closely resembling traditional duty-based claims, the action falls on the law side of the historical divide.

Because the Commission seeks punitive monetary penalties for common-law-analogous wrongdoing, the action implicates private rights. *Jarkesy*, 603 U.S. at 128-35. The public-rights exception cannot be used to convert an ordinary claim for legal liability into an administrative matter simply because it arises under a federal statute. *Id.* at 133-35.

**C. *Atlas Roofing* cannot justify administrative adjudication of punitive monetary liability for common-law-analogous claims**

The government may rely on *Atlas Roofing Co., Inc. v. Occupational Safety & Health Rev. Comm’n*, 430 U.S. 442 (1977), which upheld administrative imposition of civil penalties under the Occupational Safety and Health Act. But *Atlas Roofing* cannot bear the weight the government’s theory would place upon it.

*Atlas Roofing* reasoned that Congress may assign “public rights” disputes to administrative tribunals without a jury, particularly where Congress creates “new statutory ‘public rights’” unknown to the common law. *Id.* at 455-56. Yet this Court’s modern Seventh Amendment jurisprudence makes clear that the inquiry does not turn simply on whether Congress has labeled a claim “statutory.” As *Granfinanciera* explained, the relevant question is whether the cause of action and remedy are analogous to suits that would have been tried at law in 1791. 492 U.S. at 42-46. And *Jarkesy* reaffirmed that the public-rights exception does not permit Congress to withdraw from Article III and the Seventh Amendment actions seeking legal remedies that resemble traditional common-law claims. 603 U.S. at 133-35. Whether a claim is statutory is “not legally relevant.” *Id.* at 122.

To the extent *Atlas Roofing* suggested that the mere creation of a statutory cause of action is sufficient to place a dispute within the public-rights exception, that suggestion is in tension with *Granfinanciera*, *Stern v. Marshall*, 564 U.S. 462 (2011), and most recently *Jarkesy*. The Court has since emphasized that Congress may not evade Article III and the Seventh Amendment by recharacterizing traditional legal claims as matters of “public rights.” See *Granfinanciera*, 492 U.S. at 60-61 (rejecting the argument that statutory labeling alone removes a claim from the jury-trial guarantee).

Whatever continuing force *Atlas Roofing* retains, it cannot be extended to authorize administrative adjudication of punitive monetary liability for common-law-analogous claims. Where Congress regulates matters that would not have been adjudicated in

courts of law at the Founding, such as the administration of public benefits or the resolution of certain regulatory privileges, administrative adjudication may very well be permissible. But where, as here, the government seeks punitive monetary penalties for conduct closely analogous to traditional duty-based claims, the action falls within the core of the judicial power and must be adjudicated in Article III courts before juries.

## **II. The Communications Act's back-end collection suit does not satisfy Article III or the Seventh Amendment and it renders the jury-trial right illusory in practice**

The Second Circuit assumed for argument's sake that the Seventh Amendment could apply, but held there was "no Seventh Amendment problem" because Verizon "could have" declined to pay and preserved a trial de novo if the government later sued. *Verizon*, 156 F.4th at 106-08. That reasoning fails both doctrinally and practically.

### **A. A later collection suit cannot cure a constitutional violation that occurs when the agency adjudicates liability and imposes punishment**

The Seventh Amendment protects the right to have a jury decide liability for legal claims. That right is violated when the government assigns the determination of liability and the imposition of punitive penalties to an administrative tribunal. *Jarkesy*, 603 U.S. at 121-26. A subsequent lawsuit does not retroactively supply the jury for the proceeding that determined liability.

The Fifth Circuit made this point plainly: by the time DOJ sues (if it does), the Commission has “already found the facts, interpreted the law, adjudged guilt, and levied punishment.” *AT&T*, 149 F.4th at 503. Nothing in Article III or the Seventh Amendment suggests that an agency may exercise judicial power first and then offer a jury only after the government has secured a public judgment of wrongdoing.

Nor is it enough that § 504(a) describes the collection action as a “trial de novo.” 47 U.S.C. § 504(a). The constitutional question is not whether the later court can reconsider the case; it is whether the government may impose binding punishment without first going to an Article III court and jury.

**B. The pay-or-refuse choice makes the jury right contingent and often irrational to exercise**

The Second Circuit’s approach conditions the jury right on a regulated party’s willingness to refuse payment, accept the immediate consequences of an adverse forfeiture order, and gamble that the government will bring a collection action. That is not how constitutional rights work.

This Court has repeatedly rejected enforcement designs that force regulated parties to “bet the farm” to obtain meaningful judicial process. *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 490 (2010). In *Free Enterprise Fund*, the Court refused to require accounting firms to incur sanctions in order to challenge the constitutionality of the PCAOB’s structure, explaining that regulated parties need not “bet the farm by taking the violative action” to secure judicial review. *Ibid.* (quotation omitted).

The same concern animated *Sackett v. EPA*, 566 U.S. 120 (2012). There, the Environmental Protection Agency issued a compliance order alleging that the Sacketts had filled wetlands in violation of the Clean Water Act and directing them to restore the property. The order exposed them to potential civil penalties of up to \$37,500 per day for noncompliance, plus additional penalties for ongoing violations. *Id.* at 122-23. The Government argued that the Sacketts could obtain review only by waiting for EPA to bring an enforcement action, risking mounting penalties in the meantime. The Court rejected that interpretation, holding that the Sacketts were entitled to immediate judicial review rather than being forced to risk “serious criminal and civil penalties” to challenge the agency’s position. *Id.* at 126-27.

Likewise, in *U.S. Army Corps of Engineers v. Hawkes Co.*, 578 U.S. 590 (2016), the Corps issued a jurisdictional determination that property contained “waters of the United States,” subjecting the owners to the Clean Water Act’s permitting regime. Without judicial review, the owners faced a stark choice: incur substantial compliance costs or risk civil penalties of up to \$37,500 per day and potential criminal liability. *Id.* at 594-95. The Court again refused to interpret the statute to require landowners to proceed at their peril, explaining that regulated parties need not “await enforcement proceedings” while facing “substantial penalties.” *Id.* at 600 (quotation omitted).

This Court’s unconstitutional-conditions cases reinforce the same structural principle. In *Koontz v. St. Johns River Water Management District*, the Court held that the government may not condition the grant of a land use permit on the surrender of a constitutional right, explaining that the Constitution “forbids

burdening the Constitution’s enumerated rights by coercively withholding benefits from those who exercise them.” 570 U.S. 595, 606 (2013). The vice in *Koontz* was not merely the denial of a permit, it was the government’s use of leverage to pressure the relinquishment of constitutional protection. The same concern arises here. When the availability of a jury depends on a regulated party’s willingness to refuse payment, accept additional exposure, and provoke further enforcement, the government is using the structure of its enforcement scheme to burden the exercise of a constitutional right. The Seventh Amendment does not permit the jury right to be converted into a high-risk strategic choice.

Yet the burdens here go beyond the mounting penalties and compliance costs that drove the decisions in *Sackett* and *Hawkes*. The administrative adjudication itself imposes a separate, often ruinous injury: the unrelenting litigation burden of defending against the agency’s in-house process. Courts have long held that “mere litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury.” *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980). That principle may hold when the parties are large, sophisticated entities with deep pockets, but for smaller businesses and individuals the same process is frequently catastrophic. The discovery burdens, expert costs, reputational harm from agency pronouncements of wrongdoing, and relentless financial pressure descend long before any Article III court is permitted to intervene. This Court’s decision in *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), illuminates why these litigation burdens matter constitutionally. There, the Court recognized that being forced to defend in an allegedly unconstitutional administrative

proceeding inflicts a distinct, immediate harm—“here and now”—independent of the ultimate outcome. *Id.* at 191-92. The injury is analogous to the “right not to stand trial” protected by qualified immunity: the constitutional violation occurs the moment a party is compelled to endure the flawed process itself. *Ibid.*; see also Marshall Breger, *Short Circuiting the Administrative Judiciary: A Response to Linda Jellum*, 101 *Tex. L. Rev. Online* 173, 183-86 (2023) (discussing how petitioners in *SEC v. Cochran*, 20 F.4th 194, 203 (5th Cir. 2021) (en banc), *aff’d sub nom. Axon*, 598 U.S. 175, and *Tilton v. SEC*, 824 F.3d 276, 286 (2d Cir. 2016), successfully framed subjection to an unconstitutional tribunal as irreparable harm flowing from the proceeding, not merely its result).

Requiring the Government to comply with Article III and the Seventh Amendment from the outset—by adjudicating punitive monetary claims that resemble common-law actions before an independent judge and jury—would force agencies to think more carefully before initiating enforcement. Agencies would be forced to scrutinize evidence more rigorously, select only the strongest cases, and avoid overreach that disproportionately burdens those least equipped to defend themselves.

**C. For many parties, especially smaller businesses and individuals, Article III adjudication and the jury right are illusory in practice**

A forfeiture order has immediate real-world consequences even before any collection suit. It is a public adjudication of wrongdoing that can be widely reported and relied upon in future penalty calculations. See 47 U.S.C. § 503(b)(2)(E) (history of prior offenses);

*FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 256 (2012) (noting forfeiture orders’ reputational impact). And as the Fifth Circuit recognized, reaching a collection action requires the carrier to refuse to pay and wait to be sued. *AT&T*, 149 F.4th at 503.

In practice, that posture is untenable for many regulated parties. It invites interest and additional exposure, threatens credit and contracting relationships, and prolongs uncertainty. Even for a sophisticated entity, refusing to pay a large penalty to preserve a possible jury trial may be commercially irrational. For smaller businesses and individuals who face punitive administrative penalties in other regulatory programs, it may be impossible. A constitutional safeguard that can be exercised only by accepting outsized risk is not a meaningful safeguard.

PLF has seen how administrative enforcement regimes can impose binding and economically coercive consequences long before any meaningful judicial process is available. In *Jake’s Fireworks, Inc. v. Consumer Product Safety Commission*, 105 F.4th 627 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2700 (2025), the Consumer Product Safety Commission issued formal notices declaring the company’s consumer products unlawful, directed that they be destroyed or removed from commerce, and warned that continued sales could trigger significant civil and criminal penalties. Jake’s Fireworks disputed the Commission’s allegations and maintained that its products complied with applicable safety standards, yet it was forced to bear the immediate consequences of the agency’s unilateral determination. The notices publicly labeled the products “banned” or “misbranded,” effectively adjudicating illegality through internal agency action. Faced with those determinations, the company quarantined

approximately 23,000 cases of inventory worth more than \$2.6 million while attempting to obtain judicial review. Yet access to court depended on the agency's enforcement posture, leaving the company in regulatory limbo while the agency's findings carried immediate financial and reputational consequences.

Another recent example underscores the same practical reality. In *Leachco, Inc. v. Consumer Product Safety Commission*, 103 F.4th 748 (10th Cir. 2024), *cert. denied*, 145 S. Ct. 1047 (2025), a small, family-owned Oklahoma manufacturer of baby and pregnancy products was subjected to a multi-year, in-house enforcement action before the Consumer Product Safety Commission. The Commission alleged that Leachco's infant lounger constituted a "substantial product hazard" and sought sweeping remedies, including a mandatory recall and other corrective measures that threatened the company's continued viability. The proceeding did not begin in a neutral court. Rather, the Commission itself voted to authorize the complaint, its enforcement attorneys prosecuted the case, an agency-appointed administrative law judge presided under agency-created procedural and evidentiary rules, and the Commission retained authority to review and reverse the ALJ's decision—including making its own factual findings.

During the pendency of the proceeding, the agency publicly warned consumers that Leachco's product posed a hazard, even before any adjudication. The company endured extensive discovery demands, expert proceedings, and a multi-day evidentiary hearing all while challenging the constitutionality of the Commission's structure in federal court. Although the ALJ ultimately ruled in Leachco's favor, the Commission

appealed that decision to itself, prolonging the uncertainty and burden.

Leachco sought preliminary relief in federal court, arguing that being subjected to adjudication before an agency insulated from presidential removal inflicted an ongoing structural injury. But the Tenth Circuit rejected that claim and allowed the administrative process to continue. Certiorari was denied. *See* 145 S. Ct. 1047 (2025). Leachco's experience illustrates that administrative adjudication is not a mere procedural detour. It is itself the punishment. Years of compelled litigation, reputational harm from agency pronouncements, and existential financial risk occur before any Article III court or jury ever becomes involved—if one ever does.

These experiences illustrate how, in practice, administrative adjudication can impose the functional equivalent of punishment long before any Article III court or civil jury is permitted to exercise constitutional oversight.

Article III and the Seventh Amendment were designed to ensure that the government's power to impose punishment is checked at the moment it is exercised. A regime that converts that protection into a costly strategic option, available only to those willing to endure the harms of nonpayment, reduces adjudication in a court of law before a jury to a theoretical afterthought.

These cases therefore determine whether *Jarkesy's* constitutional rule has practical force or can be bypassed through enforcement design. If an agency may adjudicate legal liability and impose punitive penalties in-house so long as the target could refuse payment and await a later lawsuit, then the government

may preserve the jury trial right in name while defeating it in operation.

The implications extend far beyond telecommunications. Numerous federal agencies—including the SEC, CPSC, USDA, FTC, EPA, and NLRB—possess authority to adjudicate alleged violations internally and impose substantial monetary penalties without first proceeding in an Article III court. A decision endorsing the Second Circuit’s theory would furnish a template for agencies to impose punishment administratively while relegating juries to a contingent, back-end option triggered only if the regulated party refuses to comply. That structural design would make it easier to evade the constitutional boundary *Jarkesy* reaffirmed between regulation and the adjudication of private rights.

## CONCLUSION

The Court should hold that when the government seeks to impose punitive monetary penalties for violations analogous to common-law claims, Article III and the Seventh Amendment require adjudication by an independent court and a civil jury. The possibility of a later collection action cannot cure an unconstitutional agency adjudication or render the jury-trial right meaningful for ordinary Americans. The judgment of the Fifth Circuit should be affirmed, and the judgment of the Second Circuit should be reversed, thereby enforcing the constitutional boundary between administrative regulation and the adjudication of private rights.

Respectfully submitted,

OLIVER J. DUNFORD  
Pacific Legal Foundation  
4400 PGA Blvd.  
Suite 307  
Palm Beach Gardens, FL  
33410

ALLISON D. DANIEL  
*Counsel of Record*  
JOSHUA M. ROBBINS  
Pacific Legal Foundation  
3100 Clarendon Blvd.  
Suite 1000  
Arlington, VA 22201  
Telephone: (202) 888-6881  
ADaniel@pacifical.org

*Counsel for Amicus Curiae Pacific Legal Foundation*

FEBRUARY 2026