



Call For Papers

THE FUTURE OF AGENCY ADJUDICATION AFTER *SEC V. JARKESY*

Pacific Legal Foundation and the *Georgetown Journal of Law & Public Policy* seek papers for a symposium titled “The Future of Agency Adjudication after *SEC v. Jarkesy*” to be held in Washington, DC in winter 2025.

Background

The Seventh Amendment guarantees the right to trial by jury in “Suits at common law.” The Supreme Court has interpreted this to include statutory actions seeking remedies that are analogous to suits at common law or legal in nature. It held in *Atlas Roofing v. Occupational Safety and Health Review Comm’n* that Congress may assign the adjudication of claims involving public rights created by statute to administrative agencies—even where the Seventh Amendment would otherwise apply—without violating this constitutional guarantee. But claims involving private rights must be heard by Article III courts with juries.

In *SEC v. Jarkesy*, the Supreme Court decided that a defendant is entitled to a jury trial when the U.S. Securities and Exchange Commission (SEC) brings securities fraud claims with civil penalties. The Court explained that the “close nature between federal securities fraud and common law fraud confirms” that the Seventh Amendment is implicated, and the public rights exception does not apply. This ruling opens up a host of questions about the scope of Article III, the Seventh Amendment, and due process to be considered in future cases.

Pacific Legal Foundation and the *Georgetown Journal of Law & Public Policy* seek papers that address the questions arising from the *Jarkesy* ruling. We welcome proposals that look at this issue from legal, economic, political, historical, and related angles, including empirical and nonempirical approaches.

Possible Topics

1. What aspects of the *Jarkesy* ruling are unique to the SEC or securities fraud claims; or how may it be applied to other agencies or statutory claims?
2. When does a statutory claim assigned to administrative adjudication trigger the right to a jury trial?

3. How should courts draw the line between public and private rights?
4. Is there an alternative approach to determining the scope of the judicial power under Article III other than public vs. private rights?
5. Should the test for determining the applicability of the Seventh Amendment and the necessity of an Article III forum be tied together?
6. A fresh look at the Seventh Amendment's text exploring the meaning of "suits," "suits at common law," and "the right of trial by jury shall be preserved."
7. Will the "remedy" prong of Seventh Amendment analysis become even more important in future cases?
8. Would requiring actions that are analogous to suits at common law to be heard by Article III courts rather than agency adjudication overwhelm the federal courts? How might this be ameliorated?
9. What limitations can Congress place on the availability of jury trials and Article III courts pursuant to its constitutional authority to control lower court jurisdiction? Are there constitutional limits on Congress's power to do so?
10. The *Jarkesy* concurrence details the procedural protections a defendant loses when appearing in an agency proceeding instead of an Article III court; what is the future viability of both structural and procedural due process claims?
11. In *Jarkesy*, the Court noted that *Atlas Roofing* is "a departure from our legal traditions." Should *Atlas Roofing* be overturned, and if so, how?

Proposal Submission Detail

Please submit a brief proposal that describes your thesis and how your paper will contribute to the legal issues described above.

Proposals should be submitted by August 1, 2024, to Elizabeth Slattery at eslattery@pacificlegal.org. Early proposal submission is encouraged. Proposals will be reviewed on a rolling basis, and approvals will allow authors to begin work early.

Honorarium and Other Support

Authors of accepted papers will receive a \$2,500 honorarium. In addition, papers will be presented at a symposium in winter 2025 and published in an issue of the *Georgetown Journal of Law & Public Policy*. We will cover the cost of hotel accommodations and reasonable travel expenses to the symposium in Washington, DC.

Final Paper Submission Details

Papers should be 25-50 pages. Draft submissions are due two weeks before the symposium so we may circulate them to participants. Authors may revise their papers following the symposium, with final submissions due within two weeks to be published in the journal's symposium issue.

Contact Information

For questions regarding the call for papers, please contact Elizabeth Slattery, eslattery@pacificlegal.org.