No. 25-1470

In the United States Court of Appeals for the Tenth Circuit

MATTHIAS O'MEARA AND CHOICE ADVISORS, LLC,
Plaintiffs-Appellants,

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,
Defendant-Appellee.

On Appeal from the U.S. District Court for the District of Colorado
No. 25-cv-00878-GPG-TPO
Honorable Gordon P. Gallagher, District Judge

APPELLANTS' OPENING BRIEF

JOSHUA M. ROBBINS
CHARLES M. BRANDT
Pacific Legal Foundation
3100 Clarendon Blvd.,
Suite 1000
Arlington, VA 22201
(901) 590-6372
JRobbins@pacificlegal.org
CBrandt@pacificlegal.org

OLIVER J. DUNFORD
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL 33410
(916) 503-9060
ODunford@pacificlegal.org

PAUL L. VORNDRAN
Jones & Keller, P.C.
1675 Broadway, 26th Floor
Denver, CO 80202
(303) 573-1600
pvorndran@joneskeller.com

Counsel for Appellants

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STATEMENT OF RELATED CASES

SEC v. Choice Advisors, LLC, No. 21-CV-1669-JO-MSB, 2024 WL 4469095 (S.D. Cal. Oct. 7, 2024) is a related case to this appeal involving the same parties and conduct. There, the U.S. District Court for the Southern District of California granted the SEC's request for a permanent injunction against Appellants for violations of the Securities Exchange Act of 1934 and rules of the Municipal Securities Rulemaking Board; awarded the SEC disgorgement and prejudgment interest; and imposed civil monetary penalties. The court entered final judgment including the above relief.

Choice Advisors, LLC v. SEC, No. 24-6447 (9th Cir. Jan. 15, 2026) is an appeal of the above case. On January 15, 2026, the Court of Appeals for the Ninth Circuit held the case in abeyance pending the Supreme Court's resolution of *Sripetch v. SEC*, No. 25-466, 2026 WL 73091 (U.S. Jan. 9, 2026).

INTRODUCTION

In 2018, Appellants Matthias O'Meara and his firm Choice Advisors, LLC, successfully helped two charter schools raise finances through bond issues. O'Meara and Choice had not completed their registration as municipal-securities advisors with the Securities and Exchange Commission when the bonds were issued, however. And the bonds were underwritten by a bank where O'Meara briefly remained employed as he launched Choice. The charter-school clients were more than satisfied; they offered sworn testimony praising O'Meara's work. And the SEC never alleged investor loss. But the SEC has vigorously pursued Appellants for alleged securities fraud in two forums.

First, the SEC brought suit in district court and obtained summary judgment on strict-liability and negligence claims—but not on its lone scienter-based claim. *SEC v. Choice Advisors, LLC*, No. 21-cv-1669-JO-MSB, 2024 WL 4469095 (S.D. Cal. Oct. 7, 2024). The district court ordered disgorgement and prejudgment interest totaling $286,529 and assessed penalties in the amount of $213,038. *Id.* at *4–7. The court also issued a permanent follow-the-law injunction after finding a likelihood of future violations of the Securities Exchange Act of 1934 (Exchange Act) and rules of the Municipal Securities Rulemaking Board (MSRB). *Id.*

But, outside of the brief series of events described above, O'Meara and Choice have never even been accused of securities violations.

Second, a week after the district court's (amended) injunction issued, and even though O'Meara and Choice appealed the district court's decision to the Ninth Circuit, the SEC commenced the administrative phase of this case—a "follow-on" proceeding—to decide whether to impose a lifetime industry bar against O'Meara and to censure Choice. The SEC could have sought these remedies in district court, where they are available, but, because of the constitutional and procedural protections guaranteed in Article III courts, more difficult to obtain. Thus, the Commission seeks to inflict on O'Meara a lifetime ban—a "career death penalty"—through its own in-house tribunal, where it will serve as prosecutor, judge, and jury, and where history shows it is all but certain to prevail.

O'Meara and Choice therefore brought the instant suit to challenge the Commission's unconstitutional maneuverings. As the court below noted, this case "arises from the SEC's decision to pursue both litigation and administrative action against [Appellants] for securities fraud." App. 133. This split enforcement action is unconstitutional and unlawful.

First, the proceeding violates Article III of the Constitution. The SEC seeks remedies that are, as the SEC itself acknowledges, equitable in nature. But the power to issue equitable remedies is a judicial power, which the SEC does not possess. Accordingly, the SEC lacks the constitutional power to award equitable relief.

Second, O'Meara and Choice's right to due process is violated by the SEC's combination of prosecutorial and judicial functions, the obvious incentives for bias, and its decision to seek additional severe penalties in its own forum where it is all but guaranteed to prevail.

Third, the SEC's decision to divide its securities-fraud case between federal court and in-house proceedings effects a violation of O'Meara and Choice's right to a jury trial. Through its follow-on proceeding, the SEC here seeks additional penalties, *i.e.*, penalties beyond what it already obtained in federal court, for securities fraud. In *SEC v. Jarkesy*, 603 U.S. 109 (2023), the Supreme Court confirmed that securities-fraud claims must be heard before a jury because these claims are legal in nature and the narrow public-rights exception does not apply. The SEC cannot evade the Seventh Amendment by splitting its prosecution between federal court and its in-house forum.

Fourth, the SEC's dual-track prosecution violates the doctrine of *res judicata*.

The district court gave short shrift to these arguments and granted the SEC's motion to dismiss. Its cursory analysis requires reversal. First, it held that O'Meara and Choice failed to state a claim upon which relief could be granted on their Article III and due process claims. For the Article III claim, the court held the additional-penalty issue was a matter of public rights and therefore susceptible to resolution outside of an Article III tribunal. But the court ignored the predicate issue, *i.e.*, the alleged securities fraud. App. 142–44. Only an Article III court may hear matters of private right and, in any event, only an Article III court may impose equitable remedies like the proposed industry bar.

For the due process claim, the district court noted without analysis that the mere combination of executive and adjudicatory functions does not necessarily deny litigants due process. App. 141–42. But the court ignored the additional factors discussed above that show the SEC's obvious bias and its inability to consider fairly whether O'Meara should forever lose his livelihood.

The court also held that it lacked jurisdiction to consider the jury-trial and *res judicata* claims. In the court's view, the Exchange Act's provision for post-proceeding judicial review implicitly strips the district court of subject-matter jurisdiction to consider O'Meara and Choice's merely "procedural" jury-trial claim. App. 138–40. Yet the jury trial is "no mere procedural formality, but a fundamental reservation of power in our constitutional structure." *Blakely v. Washington*, 542 U.S. 296, 306 (2004). And matters of constitutional structure may be heard—indeed, must be heard—immediately in district court before the challenged proceeding ends. *See Axon Enter., Inc. v. FTC*, 598 U.S. 175 (2023). Further, because the SEC attempts to spread its securities-fraud case across different forums, the same analysis applies to O'Meara and Choice's *res judicata* claim here. The district court erred in concluding otherwise. App. 140–41.

This Court should reverse.

JURISDICTIONAL STATEMENT

Plaintiffs-Appellants Matthias O'Meara and Choice Advisors, LLC allege that the Securities and Exchange Commission's in-house follow-on proceeding violates Article III to the U.S. Constitution, the impartiality requirements of the Fifth Amendment Due Process Clause, and the right to a jury trial guaranteed by the Seventh and Fifth Amendments. App. 20–23. Appellants also argued that the follow-on proceeding violates the principle of *res judicata*. App. 23. The district court had jurisdiction under 28 U.S.C. § 1331 because Appellants brought claims pursuant to the Constitution and federal statutes.

The district court denied Appellants' motion for a preliminary injunction and granted the Commission's motion to dismiss. App. 132–47. This Court has jurisdiction to review "all final decisions of the district courts of the United States." 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

I. Because the SEC seeks to impose remedies that are equitable in nature and only Article III courts may impose equitable remedies, did the district court err in dismissing Appellants' Article III claim for failure to state a claim upon which relief may be granted?

II. In light of the SEC's combination of prosecutorial and judicial functions, the obvious incentives for bias, and the agency's near-perfect record in its follow-on proceedings, did the district court err in dismissing Appellants' Fifth Amendment due process claim for failure to state a claim upon which relief may be granted?

III. Did the district court err (A) in dismissing Appellants' jury-trial claim for lack of subject-matter jurisdiction on the ground that a jury-trial claim is not a structural constitutional claim, and (B) in dismissing Appellants' *res judicata* claim for lack of subject-matter jurisdiction?

STATEMENT OF THE CASE

A. Matthias O'Meara is a municipal-securities advisor. App. 12, ¶3. In May 2018, he formed Choice Advisors, LLC with a (now) former partner. *Id.* at 12, ¶4; *id.* at 15, ¶10. When they started the firm, Mr. O'Meara and his partner were employed by a bank that underwrote municipal-bond offerings. *Id.* at 15, ¶10. And Mr. O'Meara remained at the bank for a short time after Choice Advisors was launched. *Id.* During that time, Choice Advisors secured two charter schools as clients, and the bank was underwriting their municipal-bond issuances. *Id.* at 14–15, ¶¶9–10. The issuances were a success for all concerned: The charter schools themselves had zero complaints—indeed, they gave sworn testimony that O'Meara was instrumental to the successful financing, *id.* at 15, ¶9—and they suffered no losses. *Id.* at 16, ¶13. Nor has the SEC ever alleged client or investor harm. *Id.*

B. Nonetheless, because the bond issuances were executed before O'Meara and Choice Advisors had registered as municipal-securities advisors with the Securities and Exchange Commission, and because O'Meara's then-employer underwrote the bonds, the Commission in September 2021 brought a civil action against O'Meara and Choice in the U.S. District Court for the Southern District of California. App. 15–16,

¶¶12–13; *id.* at 133. The Commission alleged violations of the Exchange Act and MSRB rules. *Id.* at 133. After three years of litigation, the court granted summary judgment to the SEC on its negligence and strict-liability claims but denied the SEC summary judgment on its lone scienter-based claim (which the SEC then dismissed). *Id.* at 16, ¶14; 17, ¶18; 133. *See SEC v. Choice Advisors, LLC*, No. 21-cv-1669-JO-MSB, 2024 WL 4469095 (S.D. Cal. Oct. 7, 2024).

At a penalty hearing, the court asked the Commission's counsel whether the Commission would, after judgment, commence a follow-on proceeding to impose additional penalties on O'Meara and Choice Advisors. Counsel dissembled. App. at 10; 16, ¶15; 37. Ultimately, the court ordered disgorgement and prejudgment interest totaling $286,529, assessed penalties in the amount of $213,038, and issued a permanent "follow-the-law" injunction prohibiting O'Meara and Choice Advisors from future violations of the Exchange Act and MSRB rules. App. 133; *Choice Advisors*, 2024 WL 4469095, at *7.

O'Meara and Choice have appealed to the Ninth Circuit Court of Appeals, which is holding the appeal in abeyance pending the Supreme Court's decision in *Sripetch v. SEC*, No. 25-466, (U.S. Jan. 9, 2026). *See*

App. 17, ¶16; *Choice Advisors, LLC v. SEC*, No. 24-6447 (9th Cir. Jan. 15, 2026). In *Sripetch*, the Supreme Court will decide whether the SEC may obtain equitable disgorgement when investors suffer no pecuniary harm. *See id.*, Pet. for Writ of Cert. at I (Oct. 14, 2025).

C. Just a week after the district court issued its follow-the-law injunction, the SEC launched an in-house administrative proceeding to revoke O'Meara's municipal-securities registration—a so-called "career death penalty"—and to censure Choice Advisors. App. 17, ¶19; 62–63; 134. A necessary predicate for these proposed penalties is the injunction issued by the District Court for the Southern District of California. *See* App. 12–14 ¶¶6–8; *see also* Order Instituting Administrative Proceedings at 3 (hereinafter SEC Order) (citing 15 U.S.C. § 78o-4(c)(2)).[1] That injunction was based on the court's finding a likelihood of future securities-fraud violations. *Choice Advisors*, 2024 WL 4469095, at *2–4. But, outside the brief series of events at issue here, O'Meara has never even been

[1] *See Choice Advisors, LLC*, Admin. Proc. File No. 3-22250 (Oct. 15, 2024), https://www.sec.gov/files/litigation/admin/2024/34-101339.pdf, last visited Feb. 16, 2026. The docket for the follow-on proceeding is *Choice Advisors, LLC*, SEC Admin. Proc. File No. 3-22250 (filed Oct. 15, 2024), https://www.sec.gov/enforcement-litigation/administrative-proceedings/3-22250, last visited Feb. 17, 2026.

accused of securities violations. App. 18, ¶20.

Nonetheless, the SEC's "follow-on" proceeding remains pending. In that proceeding, the SEC itself will determine (1) whether "the allegations set forth in Section II [of the SEC's Order Instituting Administrative Proceedings, *i.e.*, the underlying securities-fraud allegations and related court order] are true" and (2) whether additional sanctions would be in the public interest. SEC Order at 3; *see also* App. 132–33 (decision below identifying two elements: (1) that a court has concluded that O'Meara and Choice violated the Exchange Act and MSRB rules and enjoined them from future violations; and (2) that extra sanctions are "in the public interest") (citing 15 U.S.C. § 78o-4(c)(2)). The Commission's enforcement lawyers filed a motion for summary disposition, which is fully briefed, and the proceeding remains open. App. 37, 134.

D. In response to the SEC's in-house penalty proceeding, O'Meara and Choice brought the lawsuit below in the U.S. District Court for the District of Colorado, seeking declaratory and injunctive relief. App. 9–26 (Complaint). As the district court observed, this case "arises from the SEC's decision to pursue both litigation and administrative action against [Appellants] for securities fraud." *Id.* at 133. O'Meara and Choice

allege that the SEC could have sought the additional penalties it seeks in house through the previous district court action; but that the SEC instead commenced its follow-on proceeding, where it serves as prosecutor, judge, and jury, and where the SEC is all but guaranteed to prevail. *Id.* at 12–14, ¶¶6–8; *id.* at 17–19, ¶¶19–22.

In short, O'Meara and Choice Advisors challenge the SEC's authority to proceed against them "at all." *Axon*, 598 U.S. at 192. They contend that the SEC may not seek additional penalties through its in-house tribunal because of the agency's structural constitutional defects. And they allege four causes of action at issue in this appeal.

First, the proceeding violates Article III of the Constitution, which vests the government's judicial power in independent judges, not in executive branch agencies like the SEC. App. 21–22, ¶¶28–29. *Second*, the SEC's combination of prosecutorial and judicial functions, the obvious incentives for bias, and the agency's near-perfect record in these proceedings, violate O'Meara and Choice's due process rights. *Id.* at 20–21, ¶¶24–27. *Third*, the SEC's decision to divide its securities-fraud case between federal court and an in-house tribunal effects a violation of O'Meara and Choice's right to a jury trial, *id.* at 22, ¶¶30–32—which also, *fourth*,

violates the doctrine of *res judicata*. *Id.* at 23, ¶¶33–36.

E. The district court granted the SEC's motion to dismiss and denied O'Meara and Choice's motion for preliminary injunction. According to the court, the Article III and due process allegations failed to state claims for which relief could be granted, App. 141–45, and it lacked jurisdiction over the jury-trial and *res judicata* claims, *id.* at 136–41. As a result, the SEC's in-house action against O'Meara and Choice continues. They appeal here to end that unconstitutional proceeding.

* * *

Unless context otherwise requires, this brief will henceforth refer to O'Meara and Choice Advisors collectively as "O'Meara".

SUMMARY OF ARGUMENT

I. O'Meara stated a valid claim for relief under Article III because the SEC—a non-Article III tribunal—seeks to impose equitable remedies for supposed securities-fraud violations. Article III provides that "[t]he judicial Power" extends "to *all* cases, in Law *and Equity*" arising under federal law. U.S. CONST. art. III, § 2 (emphasis added). The imposition of equitable remedies is therefore a judicial, not an executive or administrative, power. And because claims of securities fraud implicate private

rights, the narrow "public rights" exception does not apply. *See Jarkesy*, 603 U.S. at 128–30.

II. O'Meara also states a valid claim for relief under the Fifth Amendment's Due Process Clause because the follow-on proceeding is tainted by a reasonable appearance of prejudgment as to the facts to be determined, *i.e.*, whether permanently banning O'Meara from the securities industry and censuring Choice will serve the public interest. Given the SEC's tactical decision not to seek a "career death penalty" in its prior federal-court litigation—where it was available but more difficult for the SEC to obtain—O'Meara overcomes the presumption of good faith and regularity that normally attaches to agency proceedings. In light of that broken presumption, the follow-on proceeding creates a reasonable appearance of actual bias—particularly because the SEC acts as prosecutor, judge, and jury in the proceeding, and history shows that it is virtually certain to prevail.

III. The district court erred by dismissing O'Meara's jury-trial and *res judicata* claims for lack of subject-matter jurisdiction. App. 139–141. Under the Constitution, the "judicial Power" "extend[s] to" "*all* Cases, in Law and Equity, arising under this Constitution[and] the Laws of the

United States." U.S. CONST. art. III, § 2 (emphasis added). Congress thus vested "original jurisdiction" of *all* such "civil actions" in the U.S. district courts. 28 U.S.C. § 1331. O'Meara's jury-trial and *res judicata* challenges to a federal agency proceeding, predicated upon a prior action in federal district court, clearly fall within these twin ambits. And judicial precedent does not dictate otherwise. Indeed, the district court has jurisdiction to weigh these claims under *Axon* because each claim (1) involves present and ongoing injury that will be impossible to remedy once the SEC proceeding ends; (2) is collateral to the SEC's follow-on proceeding; and (3) requires judicial, not agency, expertise. 598 U.S. at 186. Accordingly, the district court erred in dismissing these claims for lack of subject-matter jurisdiction. *See Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821); *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (observing the "virtually unflagging" "obligation" for a court "to hear and decide a case" within its jurisdiction) (internal quotation marks omitted).

STANDARD OF REVIEW

This Court reviews *de novo* a district court's dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Albers v. Bd. of Cnty. Comm'rs*, 771 F.3d 697, 700 (10th Cir. 2014). The Court also reviews *de novo* a dismissal for lack of subject-matter jurisdiction under

Rule 12(b)(1). *Hennesey v. Univ. of Kan. Hosp. Auth.*, 53 F.4th 516, 527 (10th Cir. 2022). In reviewing these claims, the Court must accept all well-pleaded allegations as true and construe them in the light most favorable to O'Meara. *Smith v. United States*, 561 F.3d 1090, 1097–98 (10th Cir. 2009).

ARGUMENT

I. O'MEARA HAS STATED A VALID CLAIM FOR RELIEF UNDER ARTICLE III TO THE U.S. CONSTITUTION

A. Only Article III Courts—Not Executive Branch Agencies—May Issue Equitable Relief

1. Article III provides that "[t]he judicial Power [of the United States] shall extend to *all* cases, in Law *and Equity*, arising under [federal law]…." U.S. CONST. art. III, § 2 (emphasis added). Congress thus conferred district courts with "original jurisdiction" over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. And Congress may not "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit … in equity…." *Jarkesy*, 603 U.S. at 132 (quoting *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 284, (1856)).

Here, there is no dispute that the SEC's follow-on proceeding is a case in equity "aris[ing] under" federal law and, as both the SEC and the

district court acknowledged, the proposed sanctions are "equitable in nature."[2] App. 77–78, 144; *see also Jarkesy v. SEC,* 34 F.4th 446, 454 (5th Cir. 2022) (A "ban ... from participation in securities industry activities" is an "equitable remed[y]."). Indeed, the proposed lifetime ban for O'Meara is in essence an injunction—a classic equitable remedy. *See* Samuel L. Bray, *The System of Equitable Remedies*, 63 UCLA L. REV. 530, 553 (2016) (defining "prohibitory injunction" as "a remedy prohibiting the defendant from taking certain actions") (internal quotation marks omitted). And equitable remedies like this were traditionally within the exclusive province of the courts of equity. *See, e.g.*, *Morris v. Colman* (1812) 34 Eng. Rep. 382, 18 Ves. 437 (Ch.) (enjoining playwright from exercising trade); *Lumley v. Wagner* (1852) 42 Eng. Rep. 687, 1 De. G.M. & G 604 (Ch.) (enjoining opera singer from exercising trade).

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[2] The SEC maintains that the follow-on proceeding is a stand-alone claim even though it is based on the decision in *SEC v. Choice Advisors, LLC*, No. 21-CV-1669-JO-MSB, 2024 WL 4469095 (S.D. Cal. Oct. 7, 2024). Regardless, the "claim" at issue in the follow-on proceeding is an equitable one that belongs in an Article III court. As discussed below, the follow-on proceeding (at least in the alternative) should be considered merely as part of the SEC's securities-fraud case that began in the Southern District of California and, therefore, the SEC should not be allowed to divide that case in two such that the follow-on proceeding denies O'Meara his constitutional rights.

The SEC itself acknowledged, when discussing the jury-trial question, that "injunctions, both in England and in this country, were the business of *courts* of equity…." App. 76 (quoting *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 95 (2d Cir. 1978)) (emphasis added); *see also Trump v. CASA, Inc.*, 606 U.S. 831, 842 (2025) (identifying non-universal injunctions as "relief [that] was available in the High Court of Chancery in England at the time of the founding").

Moreover, Congress and the Courts have recognized Article III's jurisdiction over equitable remedies in securities-enforcement actions. The Exchange Act authorizes federal courts to impose industry-ban injunctions that the SEC seeks through its follow-on proceeding. *See* 15 U.S.C. § 78u(d)(5) ("In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors."); *Jarkesy,* 34 F.4th at 454.

And federal district courts have issued industry-ban injunctions. *See, e.g.*, *SEC v. Shkreli*, No. 15-cv-7175 (KAM) (JRC), 2022 WL 541792, at *2, *11 (E.D.N.Y. Feb. 23, 2022) (imposing permanent bar from serving

as an officer or director of publicly traded companies under 15 U.S.C. § 78u(d)(2), *inter alia*); *SEC v. Gupta*, No. 11-cv-7566(JSR), 2013 WL 3784138, at *3 (S.D.N.Y. July 17, 2013) ("[W]hile such associational bars are usually imposed in an administrative [follow-on] proceeding within the Commission, the Court perceives no reason why sanctions typically imposed within an administrative context cannot also be imposed pursuant to the Court's equitable authority.").

2. But the SEC is an Executive Branch agency and, therefore, it is not vested with the "judicial Power" of the United States. U.S. CONST. art. III, § 2; *see Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC,* 584 U.S. 325, 334 (2018) ("Congress cannot 'confer the Government's judicial Power on entities outside Article III.'") (quoting *Stern v. Marshall,* 564 U.S. 462, 484 (2011) (some internal quotation marks omitted). Nor are SEC Commissioners independent Article III judges. *See* U.S. CONST. art. III, § 1 (protecting independence of Article III judges by ensuring they "shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office"). Rather, the SEC is housed in the Executive Branch, from which the Commissioners have no inde-

pendence. *See Stern*, 564 U.S. at 483 ("Article III protects liberty not only through its role in implementing the separation of powers, but also by specifying the defining characteristics of Article III judges."). And because it lacks judicial power, the SEC may not itself issue equitable relief; it must ask district courts to do so.

In sum, the SEC lacks the constitutional authority to ban O'Meara from the securities industry, censure Choice Advisors, or otherwise impose equitable relief. The SEC's follow-on proceeding therefore violates Appellants' Article III rights to a judicial forum and an independent judge.

B. The Narrow "Public Rights" Exception to Article III Jurisdiction Does Not Apply Here

1. The follow-on proceeding involves private, not public, rights

The district court concluded that O'Meara could not prevail on the Article III claim because the follow-on proceeding involves public rights. App. at 142–44; *see id.* at 143 (noting that Congress may "assign adjudication of public rights to entities other than Article III courts.") (quoting *Oil States,* 584 U.S. at 334). The follow-on proceeding, however, does not involve public rights. It involves securities fraud, which the Supreme

Court conclusively determined is a matter of private rights. *See Jarkesy*, 603 U.S. at 127.

As the Supreme Court explained, a matter of public rights is one that "historically could have been determined exclusively by the executive and legislative branches." *Jarkesy*, 603 U.S. at 128 (cleaned up). This is an exception to Article III jurisdiction that "has no textual basis in the Constitution" and that therefore must be applied narrowly with an eye toward "background legal principles" and "centuries-old rules." *Id.* at 131 (citing *Murray's Lessee*, 59 U.S. at 281–85). With those considerations in mind, the Supreme Court identified only six areas for which the public-rights exception applies: (1) revenue collection, (2) immigration, (3) foreign commerce, (4) tariffs, (5) relations with Indian tribes, and (6) the granting of public benefits. *Id.* at 128–30. Cases outside those areas, therefore, involve private rights and therefore may *not* be "assign[ed] … to entities other than Article III courts." *Oil States,* 584 U.S. at 334.

And *Jarkesy* itself confirmed that a claim relating to securities fraud—and securities regulation generally—does not fit within the narrow class of public-rights matters. 603 U.S. at 127–41. Rather, statutory securities claims are based on Congress's interstate-commerce power.

And, the Court explained, neither the "securities markets [n]or interstate commerce more broadly" are established bases to invoke the public-rights exception. *Jarkesy*, 603 U.S. at 129 n.1.

It would have been surprising if the Court had concluded otherwise, considering its discussion of the public-rights exception in *Jarkesy*. Thus, the exception for revenue-collection matters, the Court "took pains" to explain, is justified by "centuries-old rules" on the subject. *Id.* at 131. The immigration exception is grounded in Congress's "plenary power over immigration." *Id.* at 129. The foreign-commerce/tariff exception exists because "the political branches had traditionally held exclusive power over this field." *Id.* at 130. Indian tribes are in a unique "trust relationship" with the United States that "informs the exercise of legislative power." *Haaland v. Brackeen*, 599 U.S. 255, 274 (2023) (cleaned up). And public lands and public benefits concern property and money that belong to the government. *See Jarkesy*, 603 U.S. at 130.

In addition, this case obviously involves the core private rights of liberty (Mr. O'Meara's right to make a living in a lawful profession) and property (his firm, Choice Advisors). *See Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 321–22 (1866) (discussing fundamental right to pursue

vocation); *Greene v. McElroy*, 360 U.S. 474, 492 (1959) (identifying the "the right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference" as within the "liberty" and "property" protected by due process); *Staton v. Mayes*, 552 F.2d 908, 913 (10th Cir. 1977) (recognizing property interest in one's career and liberty interest in one's professional reputation and standing); *cf. also Barry v. Barchi*, 443 U.S. 55, 64 (1979) (finding license to be a private property interest protected by the due process clause); *Truax v. Raich*, 239 U.S. 33, 41 (1915) (identifying "the right to work for a living in the common occupations of the community" as "of the very essence of … personal freedom and opportunity"). Indeed, since the days of Magna Carta, the right to make a living has been sacrosanct, and only the most infamous crimes have justified its wholesale deprivation. *See* 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *372.

2. The district court erroneously holds that the narrow public-rights exception applies

In concluding that this case does not involve private rights, the district court badly misconstrued the public-rights analysis. As noted above, the follow-on proceeding will address: (1) whether the District Court for the Southern District of California properly found that O'Meara and

Choice violated the Exchange Act and MSRB rules and enjoined future violations; and (2) whether the proposed sanctions would be in the public interest. App. 132–33 (citing 15 U.S.C. § 78o-4(c)(2)); *see also id.* at 60–61 (SEC Br.). Indeed, according to the SEC's description of the first prong, it must determine whether the underlying securities-violations allegations and the court's injunctive order "are true." SEC Order at 3.

The district court ignored the first prong and thus improperly narrowed the scope of the follow-on proceeding. According to the court, "the [only] issue to be determined by the SEC in the follow-on proceeding—whether barring [O'Meara] from engaging in the securities industry would be in the public interest—is not analogous to an action at common law and thus involves a public right." App. 143 (citing *Lemelson v. SEC*, 793 F. Supp. 3d 1, 15–16 (D.D.C. 2025)). Even if this analysis is right—it is not, as discussed below—the SEC will consider other issues, namely, the underlying securities-fraud claims and their resolution by the District Court for the Southern District of California. *See* SEC Order at 3.

The key here is that statutory securities-fraud claims are analogous to common-law actions and therefore implicate private, not public, rights. *See Jarkesy*, 603 U.S. at 122–26 (holding statutory securities claims are

analogous common-law actions); *id.* at 127–41 (holding that these claims are private, not public, rights). Here, the federal district court in California found O'Meara liable for violating federal securities laws and imposed, among other things, a civil monetary penalty. App. 16–17, ¶16; *Choice Advisors*, 2024 WL 4469095, at *4–7. Therefore, in addition to the separate question whether an industry ban and order of censure should imposed, the SEC will consider the questions surrounding O'Meara's (alleged) securities-laws violations. As the district court below observed, the parties' dispute here "arises from the SEC's decision to pursue both litigation and administrative action against [O'Meara] for *securities fraud*." App. 133 (emphasis added).

The SEC should not be permitted to split its securities-fraud claims between federal court and its in-house tribunal and thereby deny O'Meara his Article III right to an independent judge.

3. The district court's public-rights analysis, however, is also erroneous on its own terms

The court below claimed that because the SEC will consider (only) whether a lifetime industry bar would be in the public interest, the matter is necessarily a public-rights claim. App. 143. The conclusion doesn't follow from the premise.

In *Jarkesy*, the question whether a claim is legal (and thus subject to Article III and the Seventh Amendment) was separate from the public-rights exception. *See Jarkesy*, 603 U.S. at 127 ("Although the claims at issue here implicate the Seventh Amendment, the Government and the dissent argue that a jury trial is not required because the 'public rights' exception applies."). And the prosecution of securities-fraud claims always serves the public interest. *See id.* at 182 (Sotomayor, J., dissenting) (recognizing that the government there was "acting in its sovereign capacity to bring a statutory claim on behalf of the United States in order to vindicate the public interest"); *cf. SEC v. Canadian Javelin, Ltd.*, 64 F.R.D. 648, 651 (S.D.N.Y. 1974) (denying intervention of right because "Congress has entrusted the SEC with the responsibility for protecting the public interest" through litigation); *accord* Danné L. Johnson, *SEC Settlement: Agency Self-Interest or Public-Interest*, 12 FORDHAM J. CORP. & FIN. L. 627, 667 n.201, 669 n.206 (2007).

Therefore, the question for Article III purposes is not whether a particular *penalty* would serve the public interest. The question is whether a statutory *claim* falls within the "narrow" public-rights exception. This exception "has no textual basis in the Constitution" and there-

fore must be applied narrowly with an eye toward "background legal principles" and "centuries-old rules." *Jarkesy*, 603 U.S. at 131 (citing *Murray's Lessee*, 59 U.S. at 281–85). And, as *Jarkesy* confirmed, statutory securities-fraud claims are matters of private rights. *Id.* at 127. Therefore, the public-rights exception does not apply, and securities-fraud claims must be heard in Article III courts. *Id.*

* * *

The district court erred in dismissing O'Meara's Article III claim.

II. O'MEARA HAS STATED A VALID CLAIM FOR RELIEF UNDER THE DUE PROCESS CLAUSE

The Constitution guarantees that "[n]o person shall … be deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V. One of the basic requirements of due process is "[a] fair trial in a fair tribunal." *In re Murchison*, 349 U.S. 133, 136 (1955). Therefore, it is a long-standing principle of due process that "no man can be a judge in his own case[,] and no man is permitted to try cases where he has an interest in the outcome." *Williams v. Pennsylvania*, 579 U.S. 1, 8–9 (2016) (internal quotation marks omitted); *Riggins v. Goodman*, 572 F.3d 1101, 1112 (10th Cir. 2009) ("Impartiality of the tribunal is an essential element of due process."); THE FEDERALIST NO. 10, at 59 (Madison) (Jacob E.

Cook ed. 1961) ("No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity.").

The potential for bias here is not theoretical. According to scholar Urska Velikonja's exhaustive research, the SEC prevails in essentially every follow-on proceeding: In the 1,575 follow-on proceedings filed between 2008 and 2014, only nine challengers prevailed, and only because "the underlying conviction or permanent injunction [had been] vacated." Urska Velikonja, *Reporting Agency Performance: Behind the SEC's Enforcement Statistics*, 101 CORNELL REV. L. REV. 901, 963 (2016). Aside from that rare occurrence—which is beyond the SEC's control—the SEC "wins all follow-on cases, so long as it is able to locate and serve the defendant." *Id.*; *see also id.* at 908 & nn. 31–32 (noting suspicions that the SEC files follow-on proceedings to inflate its enforcement numbers and increase its budget).

Accordingly, and contrary to the district court's conclusory discussion below, O'Meara's challenge here involves more than the mere combination of prosecutorial and adjudicative functions. *See* App. 141–42 (observing, *e.g.*, the "combination of investigative and adjudicative

functions" does not "necessarily create[] an unconstitutional risk of bias in administrative adjudication") (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). Here, "the risk of unfairness is intolerably high" due to a "substantial countervailing" source of bias. *Riggins,* 572 F.3d at 1112 (internal quotation marks omitted). The SEC's near-perfect record in follow-on proceedings—losing only when decisions outside the agency's control intervene—demonstrates more than "a reasonable appearance" of prejudgment. *Zen Magnets, LLC v. CPSC*, 968 F.3d 1156, 1168 (10th Cir. 2020) (internal quotation marks omitted). This record, "in view of the totality of the circumstances," *Staton*, 552 F.2d at 915, shows "actual bias with respect to the factual matters to be adjudicated." *Riggins*, 572 F.3d at 1112 (internal quotation marks omitted).

The SEC's win rate—which "[e]ven the 1972 Miami Dolphins would envy," *Axon*, 598 U.S. at 197 n.3 (Thomas, J., concurring) (internal quotation marks omitted)—is not the only consideration demonstrating the due process deficits here. As the district court noted, this case "arises from the SEC's decision to pursue both litigation and administrative action against [O'Meara] for securities fraud." App. 133. That is, the SEC decided to seek some penalties in court and additional penalties through

its in-house administrative proceeding—all but guaranteeing that the additional penalties will be imposed.

What's more, the SEC surely knows that any judicial review of its follow-on decision will be based on considerable deference to the SEC's factual findings. *See* 15 U.S.C. § 78y(a)(4) ("The findings of the Commission as to the facts, if supported by substantial evidence, are conclusive.").

The SEC may have the statutory authority to file follow-on proceedings, but statutory authority does not trump litigants' rights to due process. And, therefore, this Court need not ignore the obvious incentives at play. Indeed, the Supreme Court requires courts to make a "realistic appraisal of psychological tendencies and human weakness" in these circumstances. *Withrow*, 421 U.S. at 47. Here, through its in-house tribunal—where it acts as prosecutor, judge, and jury, and where it is all but guaranteed to prevail—the SEC seeks to impose a career death penalty on Mr. O'Meara for actions that took place over the course of a couple of weeks eight years ago, despite his otherwise spotless record.

The district court's cursory dismissal of O'Meara's due process claim should be reversed.

III. THE DISTRICT COURT HAS JURISDICTION OVER O'MEARA'S JURY-TRIAL AND *RES JUDICATA* CLAIMS

A. The SEC's Securities-Fraud Case Against O'Meara Should Have Been Heard Before a Jury

The analysis in Section I related to O'Meara's Article III claim largely applies to the jury-trial claim. Because statutory securities-fraud claims are *legal* claims and the public-rights exception does not apply, the entirety of the SEC's case against O'Meara should have been heard before a jury (in an Article III court). *Jarkesy*, 603 U.S. at 134. Had the SEC not decided "to pursue both litigation and administrative action against [O'Meara] for securities fraud," App. 133, the fact questions at issue in the SEC's follow-on proceeding would have been subject to the decisions of an independent judge and jury. Therefore, the SEC cannot be permitted to split its securities-fraud case against O'Meara so as to deny him his jury-trial rights under the Fifth and Seventh Amendments.

The district court held, however, that it lacks jurisdiction even to consider O'Meara's jury-trial claim. App. 138–40. That was error.

B. The District Court Has Jurisdiction to Consider O'Meara's Jury-Trial Claim

District courts have "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. When a party brings a claim within this jurisdiction, as O'Meara

did here, a district court has a "virtually unflagging" obligation to hear it. *Sprint*, 571 U.S. at 77 (internal quotation marks omitted); *Cohens*, 19 U.S. at 404. The district court below concluded that O'Meara's jury-trial claim is implicitly subject to an alternative-review scheme, *i.e.*, the Exchange Act's provision through which parties "aggrieved" by a final order of the Commission may seek review in a circuit court of appeal. *See* App. at 137–38 (citing 15 U.S.C. § 78y(a)(1)).

The problem with the district court's conclusion is that O'Meara does not challenge a final order of the Commission. (There is no final Commission decision to challenge.) Instead, like the challengers in *Axon*, O'Meara brings a collateral challenge to the Commission's "power generally, not to anything particular about how that power [is] wielded." 598 U.S. at 193. O'Meara does not challenge "any specific substantive decision" of the SEC but "instead ... the structure or very existence of an agency: [O'Meara] charge[s] that [the SEC] is wielding authority unconstitutionally in all or a broad swath of its work." *Id.* at 189. In other words, O'Meara challenges the SEC's "power to proceed at all, rather than actions taken" in its follow-on proceeding. *Id.* at 192.

In *Axon* and its consolidated case *Cochran v. SEC*, the Supreme Court held that district courts maintain subject-matter jurisdiction to hear collateral challenges to unconstitutionally structured agency adjudications. 598 U.S at 180. Each was subject to an in-house administrative proceeding and, while those proceedings were pending, Axon and Cochran brought separate lawsuits to challenge whether the FTC and SEC had the authority to proceed against them at all. *Id.* at 182–83. According to Axon and Cochran, each agency was unconstitutionally structured because the agencies' ALJs were improperly protected from removal; Axon further alleged a due process claim based on the FTC's combination of prosecutorial and adjudicative functions. *Id.*

In response, the agencies pointed to their respective statutory schemes, which allowed post-agency review in circuit court. *See Axon*, 598 U.S. at 185. These review statutes, the agencies argued, implicitly stripped district courts of jurisdiction to hear Axon and Cochran's constitutional claims. *See id.* at 185, 193–94. The Supreme Court rejected that argument.

According to the Supreme Court, a district court maintains jurisdiction to hear a collateral constitutional claim, even though post-pro-

ceeding judicial review is available, when: (1) the denial of jurisdiction would foreclose meaningful judicial review; (2) the claim is wholly collateral to the agency proceedings; and (3) the claim falls outside agency expertise. *Id.* at 186 (citing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 212–13 (1994)).

Applying these "*Thunder Basin* factors," the Supreme Court concluded that the district courts maintained jurisdiction to hear Axon's and Cochran's collateral claims. ***First***, the harm suffered by Axon and Cochran was their "being subjected to unconstitutional agency authority." *Axon*, 598 U.S. at 191 (internal quotation marks omitted). This abstract-sounding harm is a well-recognized "here-and-now" injury that is *impossible to remedy* once the agencies' in-house proceedings have ended. *Id.* (internal quotation marks omitted) Therefore, denying district-court jurisdiction to hear Axon and Cochran's claims and postponing any judicial review until after the agency proceedings were over, would have foreclosed meaningful judicial review because a "proceeding that has already happened cannot be undone," and judicial review of "structural constitutional claims would [have] come too late to be meaningful." *Id.* ***Second***, structural constitutional claims are wholly collateral to administrative-

agency proceedings. *Id.* at 192–94. Challengers to agency structure object to the agency's (unconstitutional) existence—not to the subject matter of an agency proceeding or to substantive and procedural decisions made therein. *Id.* at 193. ***Finally***, structural claims are pure questions of constitutional law, which fall outside agency expertise. *Id.* at 194–95.

Therefore, the Supreme Court held that the alternative-review schemes for final agency decisions do not deny district courts subject-matter jurisdiction to hear structural constitutional claims. *Axon*, 598 U.S. at 195–96.

As discussed next, application of the *Thunder Basin* factors here shows that the district court erred in concluding that it lacked jurisdiction to hear O'Meara's jury-trial claim.

1. Denying district court jurisdiction would foreclose meaningful judicial review of O'Meara's jury-trial claim

According to the district court, O'Meara can obtain meaningful judicial review of his jury-trial claim because the Exchange Act, 15 U.S.C. § 78y(a)(1), allows "person[s] aggrieved" by "final order[s]" to seek review in the courts of appeal. *See* App. 139. That is, because O'Meara may renew his jury-trial defense in the court of appeals, meaningful judicial review is available. *Id.*

But O'Meara's jury-trial claim goes to the constitutional structure of the SEC, not to any procedural or substantive decisions made in the SEC's follow-on proceeding. Under Article III and the Seventh Amendment, Executive Branch agencies are precluded from even hearing—much less resolving—legal claims like securities fraud that would have been heard in the common law courts when the Seventh Amendment was adopted. *Jarkesy*, 603 U.S. at 122–26.

The Constitution "prohibits Congress from 'withdrawing from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law.'" *Jarkesy*, 603 U.S. at 127 (cleaned up) (quoting *Murray's Lessee*, 59 U.S. at 284 (cleaned up). And "[o]nce such a suit 'is brought within the bounds of federal jurisdiction,' an Article III court *must* decide it, with a jury if the Seventh Amendment applies." *Id.* (quoting *Stern*, 564 U.S. at 484) (emphasis added).

The Supreme Court emphasized that these "propositions are critical to maintaining the proper role of the Judiciary in the Constitution." *Jarkesy*, 603 U.S. at 127. "Under the basic concept of separation of powers that flows from the scheme of a tripartite government adopted in the

Constitution, the judicial power of the United States cannot be shared with the other branches." *Id.* (cleaned up).

Therefore, as in *Axon*, the injury suffered by O'Meara is being subjected to the SEC's unconstitutionally structured follow-on proceeding—a "here-and-now injury" that is "impossible to remedy once the proceeding is over, which is when appellate review kicks in." 598 U.S. at 191 (internal quotation marks omitted). As a result, post-proceeding judicial review "would come too late to be meaningful," and O'Meara "will lose [his] right[] not to undergo the complained-of agency proceedings if [he] cannot assert [that right] until the proceeding[] [is] over." *Id.* at 191–92.

The district court adopted wholesale the analysis in *Lemelson v. SEC*, 793 F. Supp. 3d 1 (2025), *appeal filed* June 5, 2025. *Lemelson* erroneously held that no here-and-now injury exists in this context because harm "accrues only if the SEC takes 'certain allegedly unconstitutional steps to injure him.'" *Id.* at 9 (citation omitted). But, to repeat, O'Meara doesn't challenge any "steps" taken during the follow-on proceeding. O'Meara challenges the SEC's authority to proceed *at all*. The injury imposed on O'Meara by the SEC's proceeding *qua* proceeding cannot be remedied on appeal of a final agency order.

Precluding district court jurisdiction would "foreclose all meaningful judicial relief." *Axon*, 598 U.S. at 190. The first *Thunder Basin* factor favors O'Meara.

2. The jury-trial claim is wholly collateral to the administrative adjudication

O'Meara here submits that because the SEC's follow-on proceeding does not provide a jury trial, the SEC may not proceed "at all;" he is not challenging any actions taken (or that will be taken) in that proceeding. *Axon*, 598 U.S. at 192. That is, O'Meara's "separation-of-powers claim[] do[es] not relate to the subject" of the follow-on proceeding. *Id.* at 193. This claim, in sum, has "nothing to do with the enforcement-related matters the Commission[] 'regularly adjudicate[s]'—and nothing to do with those [it] would adjudicate in assessing" the claim against O'Meara. *Id.*

The district court again adopted the analysis in *Lemelson*. There, the court focused on the challenger's allegation that the SEC's proceeding lacks a procedural option for a jury trial and thus concluded that the challenger's claim was "merely" procedural. 793 F. Supp. 3d at 9–10.

The jury trial, however, is "no mere procedural formality, but a fundamental reservation of power in our constitutional structure." *Blakely*, 542 U.S. at 306. O'Meara's jury-trial claim is thus wholly "collateral" to

any "orders or rules from which review might be sought." *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 490 (2010) (internal quotation marks omitted). The second *Thunder Basin* factor supports O'Meara.

3. The jury-trial claim does not implicate agency expertise

O'Meara's jury-trial claim is a quintessential constitutional claim, squarely within the judicial wheelhouse. It does not implicate agency expertise. The district court, however, concluded that this claim is "not outside the SEC's expertise because it does not raise a 'pure question of constitutional law, detached from considerations of agency policy.'" App. 139–40 (quoting *Lemelson*, 793 F. Supp. 3d at 10). Therefore, the court asserted, O'Meara's claim "requires development of the factual record because the right to a jury trial arises only if there are issue[s] of fact to be determined." App. 140.

To the contrary, fact questions will be determined at the follow-on proceeding. Again, as the SEC itself stated, it will consider (1) whether the underlying securities-fraud allegations and related court orders "are

true" and (2) whether the proposed industry bans would be in the public interest. SEC Order at 3.[3]

In any event, the question whether a party has a right to a jury trial is not addressed *after* trial. The *pre*-trial analysis is whether a claim is "legal in nature," and if so, whether the narrow public-rights exception applies. *Jarkesy*, 603 U.S. at 122, 152 (internal quotation marks omitted). The Court in *Jarkesy* never hinted that this analysis would change if the government argued in advance that no fact issues would be raised at trial. Indeed, under the district court's proposed rule, criminal defendants could be denied their Sixth Amendment right to a jury trial if the prosecutor assures the court that no factual disputes will be raised.

The court's error is compounded by the fact that jury trials can take place only in Article III courts. "If a suit is in the nature of an action at

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[3] Consideration of the second factor alone involves significant factual questions: (1) the egregiousness of the conduct, (2) the isolated or recurrent nature of the infraction, (3) the degree of scienter involved, (4) the sincerity of the respondent's assurances against future violations, (5) the sincerity of the respondent's recognition of wrongdoing, and (6) the likelihood that the respondent's occupation will afford opportunity for future violations. *See, e.g.*, *Sean R. Stewart*, Exchange Act Release No. 99613, Investment Advisors Act Release No. 6563, 2024 WL 8352, at *4 (S.E.C. Feb. 27, 2024) (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981)).

common law, then the matter presumptively concerns private rights, and adjudication by an Article III court is mandatory." *Jarkesy*, 603 U.S. at 128 (citing *Stern*, 564 U.S. at 484). Therefore, the *agency's* determination of fact disputes has no bearing whatsoever on the question whether a litigant is entitled to a jury trial (in an Article III court).

Finally, these questions—whether a claim is a legal claim and, if so, whether the narrow public-rights exception applies; in short, whether a claim may be heard outside of an Article III court—is a pure question of constitutional law "outside the Commission's expertise." *Axon*, 598 U.S. at 194 (cleaned up); *see also Free Enter. Fund*, 561 U.S. at 491 (noting that these standard questions of constitutional law are unrelated to "technical considerations of [agency] policy") (internal quotation marks omitted).

Accordingly, the SEC lacks expertise over the claim, meaning the final *Thunder Basin* factor favors jurisdiction. *Axon*, 598 U.S. at 194–95.

* * *

All three *Thunder Basin* factors favor the assertion of subject-matter jurisdiction over O'Meara's jury-trial claim. The district court's contrary holding is erroneous. This Court should reverse.

C. The District Court Has Jurisdiction over O'Meara's *Res Judicata* Claim

The SEC couldn't seek new penalties through a new district court lawsuit; it shouldn't be allowed to do so in house. But, applying *Axon*, the district court found no subject-matter jurisdiction over O'Meara's *res judicata* claim. App. 140–41. *Axon* leads to the opposite conclusion.

1. Prohibiting collateral res judicata *claims would foreclose meaningful judicial review*

Like O'Meara's jury-trial claim, the *res judicata* claim will be unreviewable and incurable if the district court lacks jurisdiction to hear it now. Below, the district court disagreed, explaining that O'Meara and Choice Advisors "are parties in ongoing SEC proceedings, and the statute at issue provides for judicial review of SEC action." App. 140 (cleaned up). Again, the district court misapprehends the claim.

Under the doctrine of *res judicata*, or claim preclusion, a "final judgment on the merits of an action" prevents parties from litigating "issues that were or *could have been raised* in th[at] prior action." *Wilkes v. Wyo. Dep't of Emp. Div. of Lab. Standards*, 314 F.3d 501, 503–04 (10th. Cir. 2002). The SEC's follow-on proceeding necessarily seeks to litigate issues that could have been raised in its federal lawsuit against O'Meara, including the industry-bar penalty. *See* App. 10, 38–39.

Initiating in-house proceedings to revisit an issue that could have been raised in federal district court—and which, arguably, *was raised* by the court, *see id.*—subjects O'Meara to a "here-and-now injury." *Axon*, 598 U.S. at 191 (internal quotation marks omitted). And critically, that injury will be incurable by the time the issue reaches the court of appeals. Imagine, for example, that the SEC rejects O'Meara's *res judicata* claim—a virtual certainty given its decision to bring the follow-on proceedings in the first place.[4] Because there is no interlocutory appeal, O'Meara would be forced to defend against an action that the SEC had no legal right to bring in the first place. And O'Meara would "lose" his "right[]" not to endure the proceeding. *Axon*, 598 U.S. at 192. Under such circumstances, judicial review "would come too late to be meaningful." *Id.* at 191. Jurisdiction is favored under the first *Thunder Basin* factor.

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[4] While it is likely that the SEC will reject O'Meara's *res judicata* claim, it intends to deploy collateral estoppel to prevent O'Meara from relitigating the so-called "*Steadman* factors." *See* Division of Enforcement's Motion for Summary Disposition at 9–12, *Choice Advisors, LLC*, Admin. Proc. File No. 3-22250 (Jan. 17, 2025), https://www.sec.gov/files/litigation/apdocuments/3-22250-2025-01-17-motion.pdf, last visited Feb. 17, 2026. For the "*Steadman* factors," see fn. 3, above.

2. *The* res judicata *claim is wholly collateral to the SEC's proceeding*

Subject-matter jurisdiction is favored for collateral structural claims. *Axon*, 598 U.S. at 186. O'Meara's *res judicata* claim is collateral because it has nothing to do with the substance or merits of the follow-on proceeding. But according to the district court, the claim is not wholly collateral because O'Meara is "challenging something particular about how the SEC's power was wielded instead of objecting to the Commission's power generally." App. 140 (internal quotation marks omitted). Not so. O'Meara challenges his *subjection* to the follow-on adjudication—which, because predicated upon an injunction obtained after fully litigating an action in federal district court—must, of necessity, proceed on the agency's understanding that *res judicata* will not apply (otherwise, the agency would not have initiated the proceeding). Or stated differently, O'Meara challenges the power of the SEC even to *initiate* an in-house adjudication in light of a prior court judgment concerning the same events and parties that could have granted the relief now sought in-house.

The elements of *res judicata* make plain that O'Meara's claim is entirely collateral to the follow-on proceeding. *Res judicata* has four ele-

ments: If there is "(1) a final judgment on the merits in an earlier action; (2) identity of the parties in the two suits; and (3) identity of the cause of action in both suits," then *res judicata* will bar the claim in the subsequent action, *unless* (4) "the party seeking to avoid preclusion did not have a full and fair opportunity to litigate the claim in the prior suit." *MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 831 (10th Cir. 2005) (internal quotation marks omitted). None of these considerations speaks to the merit of the claims being brought or the substance of the "orders or rules from which review might be sought." *Axon*, 598 U.S. at 193 (internal quotation marks omitted). Indeed, courts must look to facts *external to* the instant claim—to prior litigation—to determine whether claim preclusion applies. Because *res judicata* has "nothing to do with the enforcement-related matters [the SEC] regulatory adjudicates," it is collateral to the follow-on proceeding. *Id.* at 193 (cleaned up). And because the claim is collateral, subject-matter jurisdiction is favored under *Thunder Basin* factor two.

3. The res judicata *claim is outside the SEC's area of expertise*

According to the district court, O'Meara's claim falls within the SEC's expertise because "resolution of the res judicata question neces-

sarily involves consideration of the nature of the prior federal civil enforcement action and the follow-on administrative proceeding, both brought under federal securities laws." App. 141. The district court is mistaken. As far as *res judicata* goes, the "nature" of legal proceedings is not an expert administrative inquiry. If anything, it is a matter especially suited for judicial resolution.

Determining whether the SEC's claim is barred by *res judicata* requires the court to consider: (1) whether there is a final, valid judgment on the merits from an earlier action; (2) whether the parties are the same or otherwise in privity; (3) whether the cause of action could have been brought in the previous suit; and if factors (1) through (3) are satisfied, (4) whether the SEC (as the party seeking to avoid preclusion) had a full and fair chance to litigate the claim in the prior suit. *MACTEC*, 427 F.3d at 831. These considerations do not implicate the SEC's securities expertise; nor are they "technical considerations of [agency] policy." *Free Enter. Fund*, 561 U.S. at 491 (internal quotation marks omitted). Quite the opposite: Factors (1) through (3) are quintessential questions of judicial administration that courts answer with such frequency that claim preclusion is now a foundational component of courses in civil procedure. Mean-

while factor (4) basically boils down to a due process inquiry, *Kremer v. Chem Constr. Corp.*, 456 U.S. 461, 482–83 & n.24 (1982)—a uniquely judicial concern. *See Murray's Lessee,* 59 U.S. at 276–77 (explaining it is courts' job to determine what "process" is "due" based on "the constitution itself" and "settled usages and modes of proceeding existing in the common and statute law of England").

In short, O'Meara's *res judicata* claim is not only outside of the SEC's expertise; it instead requires *the judiciary's* expertise. The last *Thunder Basin* factor points in favor of jurisdiction.

* * *

The district court erred in dismissing O'Meara's *res judicata* claim for lack of subject-matter jurisdiction. This Court should reverse.

CONCLUSION

The Court should reverse and vacate the district court's dismissal of O'Meara's Article III and due process claims for failure to state a claim; reverse and vacate the district court's dismissal of O'Meara's jury-trial and *res judicata* claims for lack of subject-matter jurisdiction; and remand for further proceedings.

DATED: February 17, 2026

Respectfully submitted,

/s/ Oliver J. Dunford

JOSHUA M. ROBBINS
CHARLES M. BRANDT
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201
(202) 888-6881
JRobbins@pacificlegal.org
CBrandt@pacificlegal.org

OLIVER J. DUNFORD
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL 33410
(916) 503-9060
odunford@pacificlegal.org

PAUL L. VORNDRAN
Jones & Keller, P.C.
1675 Broadway, 26th Floor
Denver, CO 80202
(303) 573-1600
pvorndran@joneskeller.com

Attorneys for Appellants
Matthias O'Meara and Choice Advisors, LLC

ORAL ARGUMENT STATEMENT

Oral argument is requested. This case involves complex questions of constitutional law of fundamental importance to the structure of the federal government and the fairness of agency proceedings. Appellants respectfully submit that oral argument would assist the Court in its consideration of these important legal questions.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify that this Brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this Brief contains 9,305 words, excluding the parts of the Brief excluded by Fed. R. App. P. 32(f).

I further certify that this Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this Brief has been prepared using Century Schoolbook 14-point font, a proportionately spaced typeface.

DATED: February 17, 2026.

/s/ Oliver J. Dunford
OLIVER J. DUNFORD
Attorney for Appellants Matthias O'Meara and Choice Advisors, LLC

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the CM/ECF system. I certify further that the foregoing document was served on all parties or their counsel of record through the appellate CM/ECF system.

/s/ Oliver J. Dunford
OLIVER J. DUNFORD
Attorney for Appellants Matthias O'Meara and Choice Advisors, LLC

ATTACHMENT

Order [Docket No. 33]

Dec. 9, 2025

U.S. District Court – District of Colorado
Civil Case No. 1:25-cv-00878-GPG-TPO

and

Final Judgment [Docket No. 34]

Dec. 9, 2025

U.S. District Court – District of Colorado
Civil Case No. 1:25-cv-00878-GPG-TPO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
District Judge Gordon P. Gallagher

Civil Action No. 25-cv-00878-GPG-TPO

MATHIAS O'MEARA and
CHOICE ADVISORS, LLC,

Plaintiffs,

v.

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Defendant.

ORDER

Before the Court are Plaintiffs' Motion for a Preliminary Injunction (D. 11) and Defendant's Combined Motion to Dismiss and Opposition to Plaintiffs' Motion for A Preliminary Injunction (D. 19). The Court DENIES Plaintiffs' motion and GRANTS Defendant's motion for the following reasons.

I. STATUTORY BACKGROUND

The Securities Exchange Act of 1934 (the Exchange Act) empowers the U.S. Securities and Exchange Commission (SEC) to initiate administrative proceedings to bar or suspend a person or party from working in the securities industry if it finds, "on the record after notice and opportunity for hearing," that such a bar or suspension is "in the public interest" and that the person has been convicted of a serious crime or been enjoined by a court from, among other things, violations of the Exchange Act and the rules of the Municipal Securities Rulemaking Board

(MSRB). 15 U.S.C. § 78o–4(c)(2). The Act provides that "[a] person aggrieved by a final order of the Commission" in such a "follow-on" administrative proceeding "may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit . . ." 15 U.S.C. § 78y(a)(1).

II. FACTS

This civil action arises from the SEC's decision to pursue both litigation and administrative action against Plaintiffs for securities fraud.[1] On September 23, 2021, the SEC filed a complaint in the U.S. District Court for the Southern District of California against Plaintiffs Matthias O'Meara and Choice Advisors, LLC (Choice), alleging violations of the Exchange Act and MSRB rules applicable to municipal advisers (D. 1 at 1). The SEC's complaint alleged these violations occurred between May 2018 and October 2018, when O'Meara's counsel was completing an application for registration as a municipal adviser (*id.*). Following a multi-year investigation and three years of litigation, the court granted summary judgment in favor of the SEC on its strict liability and negligence-based claims, which were largely predicated on Plaintiffs' unregistered status (*id.* at 1–2). It denied summary judgment on the SEC's sole scienter-based claim, and the SEC dismissed that claim and moved to establish remedies (*id.* at 2). The court then issued orders on September 24, 2024, imposing a permanent injunction and disgorgement, with penalties and interest totaling nearly $500,000 (*id.*). The injunction prohibited Plaintiffs from violating the provisions of the Exchange Act and MSRB rules under which the court had granted the SEC

[1] The Court draws the operative facts as set forth in Plaintiff's Complaint for Declaratory and Injunctive Relief (D. 1).

summary judgment (*id.*). Plaintiff filed an appeal in the Ninth Circuit on February 12, 2025 (*id.* at 3).

Seven days after the district court issued its written injunction as amended on October 8, 2024, the SEC initiated a follow-on administrative prosecution to revoke Mr. O'Meara's registration (*id.* at 2). The SEC filed a motion for summary disposition on January 17, 2025, and the parties are currently awaiting a decision (*id.* at 3). In the meantime, Plaintiffs filed the instant suit seeking declaratory and injunctive relief to enjoin the SEC from continuing to adjudicate the follow-on proceeding, arguing that it violates the Fifth and Seventh Amendments to the U.S. Constitution, Article III of the Constitution and the separation of powers, statutory rights to an evidentiary hearing, and well-established principles of res judicata (*id.*). Plaintiffs now move for a preliminary injunction, arguing that a decision by SEC to bar Mr. O'Meara would inflict immediate and irreparable harm to him as well as the charter school clients he currently advises (D. 11). The SEC moves to dismiss all of Plaintiffs' claims, arguing that this Court lacks jurisdiction over some and others fail to state a claim upon which relief may be granted (D. 19).

The Court finds that all of Plaintiffs' claims should be dismissed, rendering Plaintiffs' motion for a preliminary injunction moot. "[A] preliminary injunction is intended to preserve the status quo until the Court has an opportunity to reach the merits." *Maehr v. United States*, No. 18-CV-02273-PAB-NRN, 2019 WL 4164872, at *4 (D. Colo. Sept. 3, 2019), *aff'd*, 822 F. App'x 780 (10th Cir. 2020) (quoting *Rainey v. Thorstad*, No. 12-cv-00945-CMA-MEH, 2012 WL 4481457, at *1 (D. Colo. Sept. 12, 2012)). As there are no claims left for the Court to decide the merits of, there is no need to address Plaintiffs' motion for a preliminary injunction. *See Maehr,* 2019 WL 4164872 at *4 (denying motion for preliminary injunction as moot after dismissing all underlying

claims); *Debardeleben v. Pugh*, 56 F. App'x 464, 465 (10th Cir. 2003) (denying appeal of preliminary injunction order after district court dismissed underlying complaint).

III. LEGAL STANDARD

"[F]ederal courts are tribunals of limited jurisdiction with only those powers conferred by Congress." *Castaneda v. I.N.S.*, 23 F.3d 1576, 1580 (10th Cir. 1994) (quoting *Wyeth Lab'ys, a Div. of Am. Home Prods. Corp. v. U.S. Dist. Ct. for Dist. of Kansas*, 851 F.2d 321, 324 (10th Cir. 1988)). Under Federal Rules of Civil Procedure 12(b)(1), a federal court has the power to dismiss or remand an action for lack of subject matter jurisdiction. "The objection that a federal court lacks subject-matter jurisdiction . . . may be raised by a party, or by a court on its own initiative, at any stage in the litigation." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006). "The party invoking the jurisdiction of the court has the duty to establish that federal jurisdiction does exist." *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974).

Under Rule 12(b)(6), a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true and interpreted in the light most favorable to the non-moving party, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Additionally, the complaint must sufficiently allege facts supporting all the elements necessary to establish an entitlement to relief under the legal theory proposed; however, a complaint may be dismissed because it asserts a legal theory not cognizable as a matter of law. *Forest Guardians v. Forsgren*, 478 F.3d 1149, 1160 (10th Cir. 2007); *Golan v. Ashcroft*, 310 F. Supp. 2d 1215, 1217 (D. Colo. 2004). A claim is not plausible on its face "if [the allegations] are so general that they encompass

a wide swath of conduct, much of it innocent," and the plaintiff has failed to "nudge [the] claims across the line from conceivable to plausible." *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (quoting *Twombly*, 550 U.S. at 570). In assessing a claim's plausibility, legal conclusions contained in the complaint are not entitled to the assumption of truth. *See Kansas Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011). The standard, however, remains a liberal pleading standard, and "a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Dias v. City & Cty. of Denver*, 567 F.3d 1169, 1178 (10th Cir. 2009) (citation modified).

IV. ANALYSIS

A. Subject Matter Jurisdiction

The Exchange Act precludes this Court from exercising subject matter jurisdiction over Plaintiff's Seventh Amendment and res judicata claims. While federal district courts are granted "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331, Congress has the power to "preclude district courts from exercising jurisdiction over challenges to federal agency action" by proscribing "an alternative scheme of review." *Axon Enter., Inc. v. Fed. Trade Comm'n,* 598 U.S. 175, 185 (2023). The alternative scheme of review that "Congress typically chooses" is "review in a court of appeals following the agency's own review process." *Id.*

However, the Supreme Court has clarified that that an alternative review scheme "does not necessarily extend to every claim concerning agency action" but rather only to those "of the type Congress intended to be reviewed within [the] statutory structure." *Id.* at 186 (citing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 208 (1994)). To determine whether a claim is of the type

Congress intended to be reviewed within the statutory structure, courts look to the three *Thunder Basin* factors: "First, could precluding district court jurisdiction 'foreclose all meaningful judicial review' of the claim? . . . Next, is the claim 'wholly collateral to [the] statute's review provisions'? . . . And last, is the claim 'outside the agency's expertise'?" *Id.* (quoting *Thunder Basin,* 510 U.S. at 212–213). "When the answer to all three questions is yes, 'we presume that Congress does not intend to limit jurisdiction.'" *Id.* (quoting *Free Enter. Fund v. Pub. Acct. Oversight Bd.*, 561 U.S. 477, 489 (2010)).

The Court finds the analysis and holdings of *Lemelson v. Securities and Exchange Commission,* 793 F. Supp. 3d 1 (D.D.C. 2025), instructive.[2] Although *Lemelson* arose out of the U.S. District Court for the District of Colombia and thus is not binding on this Court, it addressed exceedingly similar factual circumstances and claims as are presented in this case, making the reasoning particularly relevant and persuasive. In *Lemelson,* the SEC initiated follow-on proceedings against the plaintiff, Mr. Lemelson, to suspend or bar him from working in the securities industry pursuant to the Investment Advisors Act of 1940 (Advisors Act) after it had already obtained an injunction against him from a federal district court. *Id.* at 5–6. Similarly to Plaintiffs here, Mr. Lemelson challenged the SEC's decision to initiate follow-on administrative proceedings against him on Constitutional right to jury trial and res judicata grounds. Although *Lemelson* concerned the district court's jurisdiction pursuant to the Advisors Act and not the Exchange Act, both statutes contain nearly identical language allowing people or parties "aggrieved" by an SEC order issued pursuant to follow-on administrative proceedings to "obtain

[2] No courts within the Tenth Circuit have addressed this issue yet as it pertains to the SEC.

a review of [the] order in the United States court of appeals . . .” 15 U.S.C. § 80b–13(a); 15 U.S.C. § 78y(a)(1).

Applying the *Thunder Basin* factors to the Advisors Act, Judge Sooknanan determined that the court was precluded from exercising jurisdiction over Lemelson's Seventh Amendment and res judicata claims. For the Seventh Amendment claim, Judge Sooknanan found that Lemelson was able to obtain meaningful review of the SEC's administrative decision in an Article III court, his claim was not wholly collateral because it did not challenge the existence of the SEC, and his claim was not outside the SEC's expertise because it did not raise a pure question of constitutional law detached from considerations of agency policy. *Id.* at 8–10. For the res judicata claim, Judge Sooknanan found that Lemelson was not foreclosed from meaningful judicial review because he was a party in ongoing SEC proceedings and the statute provides for judicial review of SEC action, his claim was not wholly collateral because he was not objecting to the SEC's power generally, and his claim was not outside the SEC's expertise because “[r]esolution of the res judicata question necessarily involves consideration of the nature of the prior federal civil enforcement action and the follow-on administrative proceeding, both brought under federal securities laws.” *Id.* at 11–12. Following the analysis in *Lemelson,* the Court reaches the same conclusions regarding Plaintiffs' challenges to the SEC's proceedings under the Exchange Act.

1. Fifth and Seventh Amendment right to jury trial (claim 3)

Plaintiffs argue that the follow-on administrative proceeding deprives Mr. O'Meara of his right “to have a jury decide the facts that can determine his punishment and affect his liberty and property interests” (D. 1 at ¶ 32). Plaintiffs make the same argument made in *Lemelson,* relying on *SEC v. Jarkesy,* 603 U.S. 109 (2024), for the proposition that the SEC's proceeding is a suit at

common law and thus must be decided by an Article III court (D. 11 at 16–17). *See Lemelson,* 793 F. Supp. 3d at 8 ("Lemelson alleges that the SEC seeks to deprive him of his private liberty and private property rights to pursue his chosen profession and his chosen means of livelihood without a jury trial in contravention of *SEC v. Jarkesy* . . . which held that the Seventh Amendment guarantees a jury trial in certain circumstances" (citation modified)). Applying the *Thunder Basin* factors, the Court finds this claim is precluded by the Exchange Act.

First, precluding district court review of Plaintiffs' Fifth and Seventh Amendment claim would not foreclose all meaningful judicial review. *See Axon,* 598 U.S. at 186. The Exchange Act clarifies that Plaintiffs may seek judicial review of the SEC's decision from a court of appeals, which the Supreme Court has held to be sufficiently meaningful review. *Id.* at 190 ("[r]eview of agency action in a court of appeals can alone meaningfully address a party's claims." (citation modified). *See also Lemelson,* 793 F. Supp. 3d at 8 (holding that the Advisors Act did not foreclose all meaningful judicial review because Lemelson was still able to "obtain meaningful review of the Commission's decision, including any Seventh Amendment defense, in an Article III court.").

Second, Plaintiffs' claim is not "wholly collateral" to the SEC's statutory review scheme because it is not challenging the SEC's power generally. *See Axon,* 598 U.S. at 193 (holding that claims at issue were wholly collateral because the plaintiffs "object[ed] to the Commission's power generally, not to anything particular about how that power was wielded."). Here, as in *Lemelson,* Plaintiffs challenge "the lack of any procedural option for a trial by jury . . . not the existence of the SEC." *Lemelson,* 793 F. Supp. 3d at 10 (citation modified).

Third, Plaintiffs' claim is not outside the SEC's expertise because it does not raise a "pure question of constitutional law, detached from considerations of agency policy." *See Lemelson,*

793 F. Supp. 3d at 10 (quoting *Vape Cent. Grp., LLC v. U.S. Food & Drug Admin.*, No. 24-cv-3354, 2025 WL 637416, at *8 (D.D.C. Feb. 27, 2025)). Plaintiffs' Fifth and Seventh Amendment claim requires development of the factual record because "the right to a jury trial arises only if there are issue of fact to be determined. . . . This means that 'the agency's expertise regarding the factual dispute, if any, may play a central role in the court of appeals' ultimate resolution of the constitutional argument.'" *Id.*

Having determined that the answer is "no" to all three *Thunder Basin* factors, the Court presumes that Congress intended to limit jurisdiction for this type of claim and precluded this Court from review under the Exchange Act. *See Axon,* 598 U.S. at 186.

2. Res judicata (claim 4)

Plaintiffs argue the SEC's choice not to request that the District of California court include "a bar or suspension to restrict O'Meara and Choice from participating in the securities industry" in the injunction now prevents the SEC from "splitting its claims and pursuing a second prosecution against O'Meara and Choice to obtain that relief now" (D. 1 at ¶ 35). Applying the *Thunder Basin* facts, the Court finds that this claim is precluded by the Exchange Act for many of the same reasons as Plaintiffs' Fifth and Seventh Amendment claim.

First, preclusion would not foreclose all meaningful judicial review because Plaintiffs are "parties in ongoing SEC . . . proceedings, and the statute[] at issue provide[s] for judicial review of SEC . . . action." *See Axon*, 598 U.S. at 190. Second, Plaintiffs' claim is not wholly collateral because Plaintiffs are "challenging something 'particular about how the SEC's power was wielded' instead of 'objecting to the Commission's power generally.'" *Lemelson,* 793 F. Supp. 3d at 12 (quoting *Axon*, 598 U.S. at 910). And third, Plaintiffs' claim is not outside the SEC's

expertise because "resolution of the res judicata question necessarily involves consideration of the nature of the prior federal civil enforcement action and the follow-on administrative proceeding, both brought under federal securities laws." *Id.*

Again, having determined that the answer is "no" to all three *Thunder Basin* factors, the Court presumes that Congress intended to limit jurisdiction for this type of claim under the Exchange Act.

B. Failure to State a Claim

Plaintiffs' remaining claims are dismissed for failure to state a claim upon which relief may be granted.

1. Fifth Amendment due process (claim one)

Plaintiffs argue that the SEC's adjudication of the follow-on administrative proceedings is an example of an adjudicator deciding their own cases, depriving Mr. O'Meara of his Fifth Amendment right to due process of law (D. 1 at ¶ 27). Specifically, they take issue with the fact that "SEC staff prosecutors in the follow-on administrative proceeding are the very same SEC attorneys who initiated and investigated O'Meara, his former partner, and choice. The investigating attorneys are also the same staff prosecutors that represented SEC and prosecuted the district court action" (D. 1 at ¶ 20).

The Court finds that the SEC's follow-on proceedings are not depriving Plaintiffs of due process rights. Supreme Court and Tenth Circuit case law squarely establish that agency attorneys are permitted to undertake different roles in administrative adjudications without violating due process rights. In *Withrow v. Larkin,* the Supreme Court rejected the argument that the "combination of investigative and adjudicative functions necessarily creates an unconstitutional

risk of bias in administrative adjudication." 421 U.S. 35, 47 (1975). The Court wrote that it does not violate the Administrative Procedure Act (APA) or the due process of law for "the members of administrative agencies to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings." *Id.* at 56. The Court ultimately upheld the ability of the State of Wisconsin's medical examining board to suspend a physician's license "at its own contested hearing on charges evolving from its own investigation." *Id.*

Similarly, the Tenth Circuit has recognized that its "case law generally rejects the idea that a combination of adjudicatory and investigatory functions is a denial of due process." *Riggins v. Goodman*, 572 F.3d 1101, 1112 (10th Cir. 2009). Furthermore, the court has explicitly held that "[a]gency officials can undertake multiple roles when carrying out their statutory duties, and the occupation of different roles is not necessarily problematic. For example, administrative officials could participate in an administrative adjudication even after investigating and testifying about their opinions on the underlying conduct." *Zen Magnets, LLC v. Consumer Prod. Safety Comm'n*, 968 F.3d 1156, 1167–68 (10th Cir. 2020) (citing *FTC v. Cement Inst.*, 333 U.S. 683, 700 (1948)).

Therefore, binding case law establishes that Plaintiffs do not state a Fifth Amendment claim based on the SEC's adjudication of its own follow-on administrative proceedings.

2. Article III (claim two)

Plaintiffs argue that the SEC "lacks any lawful power to decide cases and controversies such as the administrative follow-on case . . . usurping the judicial power of the United States and purporting to relocate and vest it in an independent agency of the executive branch, thereby violating Article III of the [C]onstitution" (D. 1 at ¶ 29). The SEC responds that the issue to be

determined by the SEC in the follow-on administrative proceeding involves public rather than private rights and thus does not necessarily need to be adjudicated by an Article III court (.

The Court agrees with the SEC; Plaintiffs fail to state a claim because the SEC's follow-on administrative proceedings concern public rights, rather than private rights, and thus may be removed from Article III courts. Although "Congress cannot 'confer the Government's judicial Power on entities outside Article III,'" Supreme Court precedents "have given Congress significant latitude to assign adjudication of public rights to entities other than Article III courts." *Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC*, 584 U.S. 325, 334 (2018) (quoting *Stern v. Marshall,* 564 U.S. 462, 484 (2011)). Specifically, Congress may grant an agency adjudicatory authority over claims "unknown to the common law." *Jarkesy,* 603 U.S. at 137 (citing *Atlas Roofing,* 430 U.S. 442, 461 (1977)). In contrast, "[i]f a suit is in the nature of an action at common law, then the matter presumptively concerns private rights, and adjudication by an Article III court is mandatory." *Id.* at 128 (citing *Stern*, 564 U.S. at 484). To determine if a suit concerns private rights, courts look primarily to "whether it is made of the stuff of the traditional actions at common law tried by the courts at Westminster in 1789." *Id.* at 127–128 (citation modified). However, courts also consider whether the suit provides a punitive remedy that courts have recognized can only be enforced in courts of law, targets the same basic conduct as a common law action, employs the same terms of art, and operates pursuant to similar legal principles. *See id.* at 134.

Here, the issue to be determined by the SEC in the follow-on proceeding – whether barring Plaintiffs from engaging in the securities industry would be in the public interest – is not analogous to an action at common law and thus involves a public right. *See Lemelson,* 793 F. Supp. 3d at 15–16 (holding that the SEC's follow-on proceeding determining if suspending or barring plaintiff

from the securities industry was in the public interest involved a claim "unknown to the common law"). The punitive remedy at issue is a bar or suspension from the securities industry, which is an equitable remedy intended to restore the status quo of the securities industry that courts have not determined can only be enforced in Article III courts. *See Tull v. United States,* 481 U.S. 412, 422 (1987) (holding that civil penalties "intended to punish culpable individuals, as opposed to those intended simply to extract compensation or restore the status quo" can only be enforced in courts of law). Additionally, the SEC's proceeding does not employ the same terms of art or operate pursuant to similar legal principles as a common law action.

Having determined that because the SEC's follow-on administrative proceeding concerns public rights, Congress permissibly removed it from the purview of Article III courts, and Plaintiffs fail to state a claim upon which relief may be granted.

3. Statutory right to a hearing on the record (claim five)

Plaintiffs argue that the SEC's follow-on administrative proceedings fail to provide an opportunity for a live evidentiary hearing in violation of the Exchange Act and the APA, both of which require the SEC to provide notice and opportunity for hearing before imposing sanctions on a party (D. 1 at ¶ 38); 15 U.S.C. § 80b-3(f); 5 U.S.C. § 554(c)(2).

Tenth Circuit and Supreme Court precedent clearly establish that Plaintiff is incorrect, and the SEC may impose sanctions without a live evidentiary hearing where there is no genuine dispute of material fact – as would be the case if the SEC administrative law judge (ALJ) in Plaintiffs' SEC proceeding were to grant the SEC's pending motion for summary disposition. Although the Exchange Act requires that the SEC make findings "on the record after notice and opportunity for hearing" before suspending a person from working in the securities industry, the SEC has adopted

a rule permitting summary disposition of a claim or defense where "there is no genuine issue with regard to any material fact" and "the movant is entitled to summary disposition as a matter of law." 17 C.F.R. § 201.250(b). The Supreme Court has repeatedly upheld comparable agency rules under statutes similarly requiring "notice and opportunity for hearing." For example, in *Weinberger v. Hynson, Westcott & Dunning, Inc.*, the Court upheld a Food and Drug Administration (FDA) rule allowing the Commissioner to withdraw approval for a new drug application without a hearing "[w]hen it clearly appears . . . that there is no genuine and substantial issue of fact." 412 U.S. 609, 620 (1973). *See also Costle v. Pac. Legal Found.*, 445 U.S. 198, 213 (1980) (agency "was entitled to condition an adjudicatory hearing . . . on the identification of a disputed issue of material fact"). The Court in *Weinberger* said the rule did not violate the Federal Food, Drug, and Cosmetic Act's requirement that the FDA give "due notice and opportunity for hearing to the applicant" before withdrawing its approval. *Weinberger,* 412 U.S. at 620. The Tenth Circuit has similarly held that an agency need only "provide an evidentiary hearing '[w]here a contest exists with respect to a material fact.'" *Oklahoma Bankers Ass'n v. Fed. Rsrv. Bd.,* 766 F.2d 1446, 1452 (10th Cir. 1985) (quoting *Connecticut Bankers Ass'n v. Bd. Of Governors,* 513 F.2d 251 (D.C.Cir. 1980).

As the Parties are currently waiting for the ALJ to make a decision on the SEC's motion for summary disposition, the Court finds that the SEC has provided Plaintiffs with adequate notice and opportunity for hearing at this stage in the proceedings. Therefore, Plaintiffs have failed to state claim upon which relief may be granted.

V. CONCLUSION

Accordingly, Plaintiff's Motion for a Preliminary Injunction (D. 11) is DENIED and Defendant's Motion to Dismiss (D. 19) is GRANTED. It is FURTHER ORDERED that the Clerk of the Court shall close this case.

DATED December 9, 2025.

BY THE COURT:

Gordon P. Gallagher
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
District Judge Gordon P. Gallagher

Civil Action No. 25-cv-00878-GPG-TPO

MATHIAS O'MEARA and
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Plaintiffs,

v.

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Defendant.

FINAL JUDGMENT

In accordance with the orders filed during the pendency of this case, and pursuant to Fed. R. Civ. P. 58(a), the following Final Judgment is hereby entered.

Pursuant to the order [D. 34] entered by Judge Gordon P. Gallagher on December 9, 2025, it is

ORDERED that Plaintiff's Motion for a Preliminary Injunction [D. 11] is DENIED. It is

FURTHER ORDERED that Defendant's Motion to Dismiss [D. 19] is GRANTED. It is

FURTHER ORDERED that this case is closed.

Dated at Grand Junction, Colorado this 9th day of December 2025.

FOR THE COURT:
JEFFREY P. COLWELL, CLERK

By: s/D. Clement
D. Clement
Deputy Clerk