

## District Court Rejects Constitutional Challenge to SEC Administrative Proceedings

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[We recently wrote](#) that **critics, including Judge Jed Rakoff, have been questioning the SEC's policy** of increasingly bringing **enforcement actions in its administrative forum rather than federal court**. We noted that several cases had been filed recently that challenged the constitutionality of the SEC's administrative proceedings. The first of those cases has now been decided: In [Chau v. SEC](#), Judge Kaplan of the U.S. District Court for the Southern District of New York ruled that the court lacked subject-matter jurisdiction to hear an action to enjoin an SEC administrative proceeding on constitutional grounds.



Chau made two constitutional claims:

1. that the SEC administrative proceeding against him violated due process for a number of procedural reasons, including the ALJ's failure to adjourn the proceedings after the SEC produced 22 million documents and failure of the ALJ to apply the Federal Rules of Civil Procedure; and
2. that the administrative proceeding violated his equal protection rights because the SEC brought three other "nearly identical" cases in federal court rather than its administrative forum.

The Court analyzed the claims under factors enumerated by the Supreme Court in [Thunder Basin Coal Co v. Reich](#) and held that it lacked jurisdiction to hear either because the SEC proceedings did not foreclose meaningful judicial review, the constitutional claims were not wholly collateral to the statute's review provisions, and the claims were not outside the agency's expertise. The Court held that the constitutional claims were central to Chau's case, not collateral to it; that the SEC is well equipped to hear constitutional claims; and that judicial review in the Court of Appeals would be adequate. Judge Kaplan wrote: "Congress has provided the SEC with two tracks on which it may litigate certain cases. Which of those paths to choose is a matter of enforcement policy squarely within the SEC's province."

In finding that it lacked subject-matter jurisdiction, the Court noted that Chau's claims amount to an "as-applied challenge," namely a claim that the administrative scheme violates a particular plaintiff's rights in light of the facts of a specific case. The Court stated that it would be more likely to sustain jurisdiction in a facial challenge, a claim that an administrative scheme is unconstitutional in all instances.

That said, the decision conceded that other challenges to the SEC's administrative proceedings may yet succeed because application of the *Thunder Basin* factors involves case-specific determinations. The Court ruled only that it lacked jurisdiction to hear the constitutional challenges against the SEC *in this particular case*.

We will keep you informed of additional developments in this area.

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