No. 26-3393

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HARRY C. CALCUTT, III,

Petitioner,

vs.

FEDERAL DEPOSIT INSURANCE CORPORATION,

Respondent.

On Petition for Review from the Federal Deposit Insurance Corporation

BRIEF OF *AMICUS CURIAE*
THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONER AND VACATUR

MICHAEL H. MCGINLEY
BRIAN A. KULP
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104

JENNIFER B. DICKEY
JORDAN L. VON BOKERN
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062

STEVEN A. ENGEL
Counsel of Record
DECHERT LLP
1900 K Street, NW
Washington, DC 20006
(202) 261-3369
steven.engel@dechert.com

Counsel for the Chamber of Commerce of the United States of America

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 26-3393 Case Name: Calcutt v. FDIC

Name of counsel: Steven A. Engel

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1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

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No

CERTIFICATE OF SERVICE

I certify that on July 2, 2026 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/Steven A. Engel

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Businesses, and corporate officers and directors, are frequent respondents in administrative enforcement actions brought by the Federal Deposit Insurance Corporation ("FDIC") and other federal agencies. The Chamber has a significant interest in ensuring that those proceedings respect the Constitution's structural protections, including the separation of powers and the jury trial right enshrined in the Seventh Amendment. In this case, however, the FDIC thwarted these fundamental guarantees. The Chamber therefore submits this brief to ensure that

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, or its counsel, contributed money intended to fund the preparation or submission of this brief. Counsel for all parties consented to this brief's filing.

Petitioner receives his constitutional right to a jury trial in an Article III court and to explain why the FDIC's conception of the "public rights" exception was wrong.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents another example of an administrative agency exceeding constitutional limits. The Framers recognized that "structural protections against abuse of power [are] critical to preserving liberty." *Bowsher v. Synar*, 478 U.S. 714, 730 (1986). Indeed, they regarded the "accumulation of all powers, legislative, executive, and judiciary, in the same hands" as "the very definition of tyranny." The Federalist No. 47, at 298 (James Madison) (Clinton Rossiter ed., 2003). Accordingly, the Framers separated the legislative and executive powers from the judicial; devised a system in which a unitary executive would remain accountable to the people; and granted the right to trial by jury as a further check against government overreach.

The growth of the administrative state has eroded these safeguards—a fact that Petitioner Harry C. Calcutt III knows all too well. For more than a decade, he has been trapped in the bureaucratic machinery of the FDIC, subjected to the type of consolidated executive adjudication feared by the Framers. Like other federal agencies, the FDIC "acts as a mini legislature, prosecutor, and court, responsible for creating substantive rules" for financial institutions, "prosecuting violations, and levying knee-buckling penalties against private citizens." *Seila Law LLC v. CFPB*, 591 U.S. 197, 222 n.8 (2020). Even worse, the agency imposes those punishments through in-house proceedings, without effective oversight from the people, their elected representatives, or Article III judges. But the Constitution prohibits such concentrations of power, no matter whether the political branches believed, at one time or another, that the FDIC's arrangement might prove more efficient than what the Constitution requires. *See Bowsher*, 478 U.S. at 736.

Here, the FDIC exploited that unconstitutional scheme to adjudicate Mr. Calcutt's private rights through in-house proceedings that deprived him of a jury trial. At the time of the Founding, that "most excellent method of decision" had long been hailed as "the glory of the English law." 3 William Blackstone, *Commentaries on the Laws of England* 391 (1768). And for good reason. A jury ensures that a person's rights and property may be taken away only by "the unanimous consent of twelve of his neighbours and equals," rather than by the political will of government functionaries. *Id.* at 379. The right to trial by jury was therefore "prized by the American colonists" in both criminal and civil cases alike. *SEC v. Jarkesy*, 603 U.S. 109, 121 (2024).

But "as tensions grew between the British Empire and its American Colonies, imperial authorities responded by stripping away that ancient right" on this side of the Atlantic. *Erlinger v. United States*, 602 U.S. 821, 829 (2024). Most notably, the Crown enforced unpopular acts of Parliament in the 1760s "by siphoning adjudications to juryless admiralty, vice admiralty, and chancery courts." *Jarkesy*, 603 U.S. at 121; *see also* Carl Ubbelohde, *The Vice-Admiralty Courts and the American Revolution* 12–13, 63, 145–46, 206–08 (1960).

Those decisions to channel colonial enforcement actions away from the people served as a major catalyst for the Revolutionary War. For "[j]ust as authorities hoped, the tactic proved 'most effective' at securing the verdicts they wished." *Erlinger*, 602 U.S. at 829 (citation omitted). The resulting abuse led the voters of Boston to decry the juryless "Jurisdiction of the Admiralty"—along with taxation without representation—as their "greatest Grievance." 1 John Phillip Reid, *Constitutional History of the American Revolution: The Authority of Rights* 177 (1986) (citation omitted). The Stamp Act Congress of 1765 similarly protested that, "by extending the jurisdiction of the courts of Admiralty beyond its ancient limits," the Stamp Act and others "ha[d] a manifest tendency to subvert the rights and liberties of the colonists." *Resolutions of the Stamp Act Congress* (Oct. 19, 1765), bit.ly/3YdhAFo. The First and Second Continental Congresses then amplified this colonial indignation—most famously in the Declaration of Independence, which identified "depriving [the colonists] in many cases, of the benefits of Trial by Jury," among its list of grievances against the King. The Declaration of Independence para. 20 (U.S. 1776); *see* 1 *Journals of the Continental Congress 1774–1789*, at 69 (Oct. 14, 1774); 2 *Journals of the Continental Congress 1774–1789*, at 145 (July 6, 1775).

"After securing their independence, the founding generation sought to ensure what happened before would not happen again." *Erlinger*, 602 U.S. at 829. The people thus quickly ratified the Seventh Amendment to "preserve[]" the civil jury trial right in "Suits at common law." U.S. Const. amend. VII. And they understood this language to "embrace[] all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume." *Jarkesy*, 603 U.S. at 122 (citation omitted).

That includes suits by the government for civil penalties, which historically "could only be enforced in courts of law." *Tull v. United States*, 481 U.S. 412, 422 (1987). It could hardly be otherwise, given the concerns that prompted the Seventh Amendment. And this guarantee is no less important today. Rerouting such penalty actions through in-house administrative proceedings would eradicate the jury's crucial check on bureaucratic overreach while "concentrat[ing] the roles of prosecutor, judge, and jury in the hands of the Executive Branch." *Jarkesy*, 603 U.S. at 140. "That is the very opposite of the separation of powers that the Constitution demands." *Id.*

Yet that is what the FDIC has continued to do here. It has pursued a civil monetary penalty against Mr. Calcutt through the inner workings of the agency. The government must try Mr. Calcutt on this quintessential legal claim, if at all, before a jury in an Article III court. And the jury's findings on that claim must govern the

FDIC's other claim for a prohibition order insofar as "common issue[s] exist[] between the claims." *Ross v. Bernhard*, 396 U.S. 531, 538 (1970).

At the same time, the FDIC cannot justify its constitutional deprivations by proclaiming the vindication of "public rights." As *Jarkesy* emphasized, the "public rights" exception to Article III and the Seventh Amendment is narrow and inapplicable absent a specific showing that "'withdraw[al] from judicial cognizance'" has firm roots in "background legal principles." 603 U.S. at 131–32 (citation omitted). The FDIC cannot identify any historical understanding that would support removing this garden-variety legal case from the Article III courts—and the jury review that the Constitution requires.

Accordingly, this Court should vacate the FDIC's Decision and Orders.

ARGUMENT

As the Supreme Court reiterated just this Term, the Seventh Amendment "applies in all proceedings, whatever their 'peculiar form,' in which 'legal rights' are to be 'settled.'" *FCC v. AT&T, Inc.*, 146 S. Ct. 1418, 1427 (2026) (alteration adopted; citation omitted). And "[t]he right to trial by jury is 'of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right' has always been and 'should be scrutinized with the utmost care.'" *Jarkesy*, 603 U.S. at 121 (citation omitted).

Applying that careful scrutiny here, there is no question that the FDIC deprived Mr. Calcutt of his right to a jury trial in an Article III court. Indeed, this suit lies at the core of that constitutional guarantee. Suits "between [the] government and its officers on the one part, and the subject or citizen on the other," are the "very cases, where, of all others, [the jury trial] is most essential for [the people's] liberty." Luther Martin, *Genuine Information* (1787), reprinted in 3 *The Records of the Federal Convention of 1787*, at 172, 222 (Max Farrand ed., 1911) (italics omitted). That is precisely why the Framers adopted the Seventh Amendment.

I. Petitioner Has a Constitutional Right to a Jury Trial in an Article III Court on the FDIC's Civil Monetary Penalty Claim.

Jarkesy makes clear that Mr. Calcutt has a right to a jury trial in an Article III court on the FDIC's civil penalty claim. The agency misreads that controlling decision in suggesting otherwise.

A. The Seventh Amendment Is Implicated Here.

In *Jarkesy*, the Supreme Court held that "the Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties against him for securities fraud." 603 U.S. at 120. Along the way, the Court stressed that "whether [a] claim is statutory is immaterial" to the Seventh Amendment analysis. *Id.* at 122. Rather, "[t]he Seventh Amendment extends to a particular statutory claim if the claim is 'legal in nature.'" *Id.* (citation omitted). And "[t]o determine whether a suit is legal in nature," the Court "consider[ed] the cause of action and the remedy it provides," while noting that "the remedy was the 'more important' consideration." *Id.* at 122–23 (citation omitted). The "civil penalties in [that] case [were] designed to punish and deter, not to compensate," and they were accordingly "'a type of remedy at common law that could only be enforced in courts of law.'" *Id.* at 125 (citation omitted). As a result, the SEC could not pursue them through an in-house adjudication. *See id.* at 122–27.

So too here. As in *Jarkesy*, the "remedy is all but dispositive" of Mr. Calcutt's Seventh Amendment right to a jury trial. *Id.* at 123. The FDIC "seeks civil penalties, a form of monetary relief." *Id.* And "a monetary remedy is legal if it is designed to punish or deter the wrongdoer." *Id.* That is because "[r]emedies intended to punish culpable individuals, as opposed to those intended simply to extract compensation or restore the status quo," were historically issued only "by courts of law, not courts of equity." *Tull*, 481 U.S. at 422; *see also Jarkesy*, 603 U.S. at 123. In fact, "[a]ctions by the Government to recover civil penalties under statutory provisions" were long "viewed as one type of action in debt requiring trial by jury." *Tull*, 481 U.S. at 418–19.

The FDIC does not dispute that the penalties in this case are designed to deter and punish Mr. Calcutt. Nor could it. Like the statute in *Jarkesy*, section 1818(i) conditions the amount and availability of civil penalties on several criteria, including the defendant's state of mind, *see* 12 U.S.C. § 1818(i)(2)(A)–(C), his "history of previous violations," *id.* § 1818(i)(2)(G)(iii), the amount of "loss" to a banking institution, *id.* § 1818(i)(2)(B)(ii)(II), (i)(2)(C)(ii), the defendant's "pecuniary gain," *id.* § 1818(i)(2)(B)(ii)(III), (i)(2)(C)(ii), and "such other matters as justice may require," *id.* § 1818(i)(2)(G)(iv). "Of these, several concern culpability, deterrence, and recidivism," which are the hallmarks of punishment statutes. *Jarkesy*, 603 U.S. at 123–24. In addition, section 1818(i) mirrors the statute in *Jarkesy* by providing for three tiers of civil penalties, with "[e]ach successive tier authoriz[ing] a larger monetary sanction." *Id.* at 124; *see* 12 U.S.C. § 1818(i)(2)(A)–(C). And the FDIC "is not obligated to return any money to victims." *Jarkesy*, 603 U.S. at 124. Instead, the penalties recovered "shall be deposited into the Treasury." 12 U.S.C. § 1818(i)(2)(J).

All this shows that the "civil penalties in this case are designed to punish and deter." *Jarkesy*, 603 U.S. at 125. That "effectively decides that this suit implicates the Seventh Amendment right" to a jury trial in an Article III court. *Id.* The fact that the FDIC's claim bears a "close relationship" to several common-law causes of actions—as Mr. Calcutt explains—"confirms that conclusion." *Id.*; *see* Calcutt Br. at 24–31. And, contrary to the FDIC's suggestion, Mr. Calcutt's jury trial "right cannot be abridged by characterizing the legal claim as 'incidental' to the equitable relief sought." *Tull*, 481 U.S. at 425 (citation omitted); *see also, e.g.*, *Overwell Harvest, Ltd. v. Trading Techs. Int'l, Inc.*, 114 F.4th 852, 861–62 (7th Cir. 2024) (holding Seventh Amendment applied to a "historically equitable" claim for aiding and abetting breach of fiduciary duty, because the plaintiff "sought clear legal relief in addition to equitable relief" on this claim). Mr. Calcutt has a constitutional right to a jury trial in an Article III court on the civil penalty claim.

B. The Public Rights Exception Does Not Apply.

The FDIC does not seriously contest that its pursuit of civil penalties implicates the Seventh Amendment. It therefore retreats to arguing that the "public rights" exception applies. *See* A.R. at 88–94. But that exception has "sharp limits." *NLRB v. Starbucks Corp.*, 159 F.4th 455, 481 (6th Cir. 2025). And the FDIC's effort to shoehorn this case into that "narrow" exception is unavailing. *Id.* at 474. Its section 1818 claim "cannot be deemed a matter of 'public right' that can be decided outside the Judicial Branch" without Mr. Calcutt's consent, let alone without a jury. *Stern v. Marshall*, 564 U.S. 462, 488 (2011).

1. *Jarkesy* once again removes any doubt. There, the Supreme Court held that the government "cannot 'conjure away the Seventh Amendment by mandating that traditional legal claims be taken to an administrative tribunal.'" *Jarkesy*, 603 U.S. at 135 (alteration adopted; citation omitted). That is true "[e]ven when an action 'originates in a newly fashioned regulatory scheme.'" *Id.* at 134 (citation and brackets omitted). What matters instead "is the substance of the suit, not where it is brought, who brings it, or how it is labeled." *Id.* at 135. Indeed, "[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. The government can rebut that presumption only by pointing to firmly rooted "background legal principles" that justify a departure from the text of Article III and the Seventh Amendment. *Id.* at 131; *see also id.* at 153 (Gorsuch, J., concurring) ("[T]raditionally recognized public rights have at least one feature in common: a serious and unbroken historical pedigree.").

The FDIC cannot point to any history that would allow it to dispense with Mr. Calcutt's right to be tried by a jury in an Article III court. This case does not involve traditionally recognized public rights, such as the collection and disbursement of tax revenues from a customs agent, the granting of land patents, or immigration matters. *See id.* at 128–30 (majority op.). Nor is there any reason for this Court to expand the doctrine to this new context. "The public rights exception is, after all, an *exception*" that "has no textual basis in the Constitution." *Id.* at 131. It thus must be applied "with care" and "close attention" to Founding-era history; otherwise, "the exception would swallow the rule." *Id.*; *see also Starbucks*, 159 F.4th at 481.

2. The FDIC's attempts to distinguish *Jarkesy* all fail. It notes that unlike with the SEC in that case, the FDIC's governing statute does not "authorize [it] to bring enforcement actions in Article III courts" for civil penalties; Congress has instead "histor[ically]" funneled such claims through the agency. A.R. at 91, 94 (quotation marks omitted). But that legal framework was forged in the late twentieth century, *see* Pub. L. No. 95-630, § 107(e)(1), 92 Stat. 3641, 3660–62 (1978), and so it is irrelevant to the Seventh Amendment inquiry. "Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*." *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 34 (2022) (citation omitted). And by "'embedd[ing]' [the jury trial] right in the Constitution," the Framers made sure to "secur[e] it 'against the passing demands of expediency or convenience.'" *Jarkesy*, 603 U.S. at 122 (citation omitted). A legislative decision that long postdated the Founding thus cannot "transmute a private right into a public one" to curtail that fundamental protection. *Id.* at 131 n.2.

Nor does it matter that the FDIC is statutorily authorized "to bring such claims *exclusively* in administrative proceedings." A.R. at 94. The fact that Congress neglected to provide for a constitutional alternative does not "strip [an enforcement] target of the protections of the Seventh Amendment" or an Article III judge. *Jarkesy*, 603 U.S. at 140. If that were enough to overcome these constitutional safeguards, then they could be nullified by legislative fiat—whenever Congress chose to reroute legal claims through an administrative agency. The Framers did not ratify such hollow protections, and Congress cannot defeat them merely by "assign[ing] a matter to an agency for adjudication." *Id.* Again, "what matters is the substance of the action, not where Congress has assigned it." *Id.* at 134.

The FDIC gets no further by arguing that "section 1818 actions regulate an insurance program created and run by the federal government." A.R. at 89. While the FDIC's claim may have "'originated in a newly fashioned regulatory scheme,'" that does not permit Congress "to siphon this action away from an Article III court" into a juryless administrative tribunal. *Jarkesy*, 603 U.S. at 135 (citation omitted). The Seventh Amendment "applies equally to congressionally established rights." *Starbucks*, 159 F.4th at 481. And so do the protections of Article III. *See Jarkesy*, 603 U.S. at 135; *Stern*, 564 U.S. at 484.

The FDIC next asserts that the "purpose" and "object" of its action is to deter "misconduct" that could affect "public funds." A.R. at 89–92. But the purpose or effects of the action are beside the point. They do not alter the substance-centered analysis that this Court must conduct. And there is nothing extraordinary or unusual about a federal bank-insurance program that would prevent an Article III court and a jury from adjudicating civil penalty claims like these. The FDIC also ignores that, "despite its misleading name, the [public rights] exception does not refer to all matters brought by the government against an individual to remedy public harms." *Jarkesy*, 603 U.S. at 152 (Gorsuch, J., concurring) (emphasis omitted). "Instead, public rights are a narrow class defined and limited by history." *Id.*; *see also id.* at

130–32 (majority op.); *Starbucks*, 159 F.4th at 474, 481. The FDIC lacks any historical support for invoking that exception here.

3. The FDIC fares no better in its appeal to precedent. It relies heavily on *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568 (1985). *See* A.R. at 90–91. But that case is inapposite for at least two reasons. First, *Union Carbide* was not a Seventh Amendment case. It held only that "Article III" did not "bar[] Congress from requiring arbitration of disputes among registrants concerning compensation under FIFRA." 473 U.S. at 582, 594. Second, *Union Carbide* involved claims—which were unknown to the common law—arising in FIFRA's unique mandatory data-sharing regime. *See id.* at 573–75, 584–85. It did not involve claims for civil penalties, as in this case, which historically "could only be enforced in courts of law." *Tull*, 481 U.S. at 422.

Finally, the FDIC seeks refuge in non-binding precedent from other Circuits. *See* A.R. at 91–92. But those decisions are unpersuasive or off point. As to *Ortega v. OCC*, 155 F.4th 394 (5th Cir. 2025), that decision badly misunderstood the historical inquiry required for the public rights exception—as the Chamber explained in supporting the petition for rehearing that is still pending in that case. *See* Chamber Amicus Br. in Support of Reh'g Pet., *Ortega v. OCC*, No. 23-60617 (5th Cir. Oct. 28, 2025), ECF 148-2. As to the other decisions, they were issued long before the Supreme Court clarified the law in *Jarkesy*, and they do not help the

FDIC at any rate. In *Simpson v. Office of Thrift Supervision*, the government secured "an order of restitution, an *equitable* remedy." 29 F.3d 1418, 1423 (9th Cir. 1994) (emphasis added). Yet the Seventh Amendment applies to actions at law, and the FDIC cannot argue here that its claim for civil penalties is rooted in equity rather than law. The Second Circuit's decision in *Cavallari v. OCC*, 57 F.3d 137 (2d Cir. 1995), is also off point. It too involved a "restitution order." *Id.* at 145. Such an order "to return unjustly obtained funds" is a classic remedy issued by the "courts of equity." *Jarkesy*, 603 U.S. at 123. *Cavallari* also declined to recognize a jury right for a penalty claim only because the penalty there was imposed for "disregard of [a cease-and-desist] order issued by the OCC," as "distinct from any legal claims." 57 F.3d at 145. This case, by contrast, involves the imposition of a civil penalty for an indisputably legal claim.

For all these reasons, the public rights exception does not apply. The FDIC cannot deprive Mr. Calcutt of his right to be tried by a jury in an Article III court for the civil penalty claim.

II. The FDIC Further Violated Petitioner's Constitutional Rights by Adjudicating the Prohibition Order Claim in Its In-House Proceeding.

The FDIC's prohibition order under section 1818(e) likewise serves a "punitive purpose." *Proffitt v. FDIC*, 200 F.3d 855, 861 (D.C. Cir. 2000). But this Court need not address whether the Seventh Amendment would normally apply to the FDIC's claims for prohibition orders. It can vacate the entire decision against Mr. Calcutt while assuming this claim seeks equitable relief.

That is because "when legal and equitable actions are tried together, the right to a jury trial in the legal action encompasses the issues common to both." *In re Lewis*, 845 F.2d 624, 629 (6th Cir. 1988) (alteration adopted; citation omitted). In such a case, the legal claim "must be tried first before a jury and the equitable claim resolved subsequently *in light of* the jury's determination of the legal claim." *Id.* Those jury findings cannot be "re-examined." U.S. Const. amend. VII. So the adjudicator is "bound by the jury's determination" on the overlapping factual issues. *Lewis*, 845 F.2d at 629 (citation omitted).

Here, the factual issues overlap significantly for the FDIC's two claims. The FDIC admits that it could not impose a prohibition order unless it "prove[d] the separate elements of misconduct, effect, and culpability." A.R. at 51. And it acknowledges that those three elements overlap extensively with the elements required to impose a civil penalty. *See* A.R. at 51–52. In fact, the FDIC made the exact same findings for "the misconduct prong" across both of its claims. *See* A.R. at 52–60. It also found—for both claims—that the "effect" element was met because Mr. Calcutt's conduct supposedly "caused losses to the bank and personal benefits to accrue." A.R. at 63 (prohibition order); *see* A.R. at 76 (noting when determining the civil penalty that the FDIC "already ha[d] discussed" the "effects" of

Mr. Calcutt's conduct). The FDIC similarly used its culpability findings for the prohibition order claim (along with an additional finding of recklessness) to support the imposition of its civil penalty. *See* A.R. at 74–76.

All this factual overlap requires vacatur of the prohibition order. Because the factual "issues are common with those upon which" the claim to allegedly "equitable relief is based, the legal claim[]" for civil penalties "must be determined *prior* to any final . . . determination of [the] equitable claims." *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 479 (1962) (emphasis added); *see also Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 511 (1959). That sequencing is "essential to vindicating [Petitioner's] Seventh Amendment rights." *Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 553 (1990).

Indeed, Petitioner holds those rights "even if adjudication of [the legal] claim[]" by a jury will necessarily "decide[] the equitable claim[] as well." *Lemon v. Int'l Union of Operating Eng'rs, Local No. 139, AFL-CIO*, 216 F.3d 577, 582 (7th Cir. 2000). In that case, the jury's "resolution of factual matters"—not the FDIC's—"will control" for both claims. *Allen v. Int'l Truck & Engine Corp.*, 358 F.3d 469, 471 (7th Cir. 2004); *see Lewis*, 845 F.2d at 629. The Court should therefore vacate the FDIC's Decision and Orders in their entirety.

CONCLUSION

For the foregoing reasons, the Chamber respectfully requests that the Court vacate the FDIC's Decision and Orders.

Respectfully Submitted,

/s/ Steven A. Engel

STEVEN A. ENGEL
Counsel of Record
DECHERT LLP
1900 K Street, NW
Washington, DC 20006
(202) 261-3369
steven.engel@dechert.com

MICHAEL H. MCGINLEY
BRIAN A. KULP
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104

JENNIFER B. DICKEY
JORDAN L. VON BOKERN
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062

Counsel for the Chamber of Commerce of the United States of America

CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7) because it contains 4,184 words, excluding those portions of the brief exempted by Fed. R. App. P. 32(f) and 6th Cir. R. 32(b)(1). This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Times New Roman 14-pt font.

Dated: July 2, 2026

/s/ Steven A. Engel
Steven A. Engel
DECHERT LLP
1900 K Street, NW
Washington, DC 20006
(202) 261-3369
steven.engel@dechert.com

Counsel of record for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2026, I caused the foregoing *amicus curiae* brief to be filed with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit. The Court's CM/ECF system was used to file the Brief, and service will therefore be accomplished by the CM/ECF system on all CM/ECF-registered counsel.

Dated: July 2, 2026

/s/ Steven A. Engel
Steven A. Engel
DECHERT LLP
1900 K Street, NW
Washington, DC 20006
(202) 261-3369
steven.engel@dechert.com

Counsel of record for Amicus Curiae