

## **Banking and Finance Law Daily Wrap Up, ENFORCEMENT ACTIONS— Group asks court to block FDIC administrative proceeding, (Aug. 20, 2024)**

Banking and Finance Law Daily Wrap Up

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By Nora Macaluso

The NCLA seeks a jury trial for its client, saying the Constitution provides for one.

The New Civil Liberties Alliance (NCLA) filed a complaint in the U.S. District Court for the District of Columbia on behalf of its client John C. Ponte, asking the court to stop the Federal Deposit Insurance Corporation (FDIC) from continuing “an unlawful administrative enforcement proceeding” against Ponte ([Ponte v. Federal Deposit Insurance Corporation](#), No. 1:24-cv-02379 (D.D.C. Aug. 15, 2024)).

Ponte is not a banker, “nor does he own or control any banks, which is FDIC’s sole statutory purview,” the alliance said.

“FDIC seeks to punish Mr. Ponte administratively over allegations that he vehemently denies, depriving him of the chance to defend himself in a jury trial in an Article III court,” [said](#) the NCLA, which asked for a [temporary restraining order](#) in addition to an end to what it called an “assault” on Ponte “overseen by an illegitimate FDIC administrative law judge.”

The NCLA asked that Ponte be granted “the jury trial the Seventh Amendment guarantees him.”

In its argument, the group cited the Supreme Court’s holding in *SEC v. Cochran*, saying that case proves that “Americans have a right to bring structural constitutional claims against agencies’ administrative proceedings directly before federal district courts.

The High Court also, in *SEC v. Jarkesy*, confirmed that enforcement actions such as the one in Ponte’s case violate the Seventh Amendment’s right to a jury trial, the NCLA said.

“Mr. Ponte has been accused of common law violations,” said NCLA Senior Litigation Counsel John Vecchione. “The Seventh Amendment requires such claims be tried before a jury in an Article III court. Administrative agencies may not proceed against citizens in violation of the Constitution.”

The FDIC included Ponte in a complaint against officials of Rhode Island-based Independence Bank, saying he “was an institution-affiliated party of the Bank” and “directly or indirectly violated regulations and recklessly engaged in unsafe or unsound practices in connection with the Bank” from June 2017 through 2019. Ponte also “caused the Bank to suffer more than a minimal loss or other damage” and received “financial gain or other benefit” as a result, the FDIC [said](#) in a court filing.

“When an agency is exceeding the scope of its jurisdiction and trying to adjudicate an enforcement proceeding against someone over whom it does not have regulatory power, that is a question that must be decided at the outset by an Article III judge,” said NCLA President Mark Chenoweth.

The NCLA’s complaint [names](#) the FDIC, Chairman Martin Gruenberg, Vice Chairman Travis Hill, and directors Michael J. Hsu, Rohit Chopra, and Jonathan McKernan, as well as Administrative Law Judge Jennifer Whang.

Companies: Independence Bank; New Civil Liberties Alliance

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