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SEC BREAKTHROUGH BRINGS DÉJÀ VU: *LORENZO* COURT RECLAIMS EXPANSIVE SCOPE OF FEDERAL SECURITIES LAWS

The Supreme Court's recent Lorenzo *decision appears to reflect a return to a broad reading of the federal securities laws that has been repeatedly rejected by the Court since the 1970's, most recently in the* Janus *case. The authors discuss* Janus *and* Lorenzo *and suggest that if a majority of the Court continues to see the securities laws as expansive,* Lorenzo *may signal a renewal of New Deal-era investor protections.*

By Ralph C. Ferrara, Erica Taylor Jones, and Corey I. Rogoff *

A decade after the Great Recession, the Supreme Court has made a clear statement in *Lorenzo*: financial crimes are indeed, crimes. The Supreme Court's decision in *Lorenzo*, which expanded the reach of Rule 10b-5, should not be read solely for its arguable erasure of *Janus*. To do so would be to visit Redwood National Park to examine just one sequoia tree. Instead, we should remember the entirety of the forest. The analysis in *Lorenzo* harkens back to the foundational Supreme Court cases that expanded private remedies under federal securities laws. This is a judicial posture that has not been seen for decades and was seemingly gone for good. But with *Lorenzo*, the light might be peeking through the canopy once again.

Since its acceptance of New Deal legislation in the late 1930s, the Supreme Court has generally read the federal securities laws one of two ways: flexibly or restrictively. From the passage of the New Deal to the mid-1970s, the Court waded briskly into the securities issues before them. The federal securities laws were intended to halt rampant fraud and scheming through disclosure. Therefore, the Court surmised, if there was fraud, then the securities laws must apply; if there was no obvious remedy, the Court would craft one lest some crooked behavior go unpunished.

This mindset changed in the mid-seventies, as the wave of American conservatism did not evade the high court. Legal methodology shifted from inquiries into Congress's general intent for remedies to whether Congress expressly authorized a specific remedy.[1] From *Blue Chip Stamps* to *Central Bank* to *Janus*, the Court restricted remedies and liability on the grounds that Congress did not explicitly create such actions. The culmination of this trend (thus far) was *Janus*.

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[1] *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979) (noting that the Court's role in proclaiming a private right of action is limited to "determining whether Congress intended to create the private right of action asserted" by the plaintiff).