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US Supreme Court Rulings Will Impact In-house Counsel Duties

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[Editor's note: This article has been updated with the July 1 decisions.]

The US Supreme Court's latest term ended with several rulings that will affect how in-house counsel do their jobs. Several cases are highlighted below.

Loper Bright Enterprises v. Raimondo and Relentless v. Department of Commerce

Overview:

- On June 28, the Supreme Court weighed in on two cases facing the US Commerce Department, issuing a much-anticipated ruling that strikes down the key interpretative framework established in the court's 1984 *Chevron v. Natural Resources Defense Council* decision.
- With majorities of 6-3 and 6-2 (with Justice Ketanji Brown Jackson recused from the *Loper Bright Enterprises* case), Chief Justice John Roberts wrote in the combined opinion that "*Chevron* defies the command of the APA [Administrative Procedure Act] that 'the reviewing court' — not the agency whose action it reviews — is to 'decide all relevant questions of law'

and ‘interpret . . . statutory provisions.’”
- Justice Roberts also noted that the decision “does not call into question prior cases that relied on the *Chevron* framework,” including the Clean Air Act ruling in *Chevron* itself.

What it means: The ruling undoes a framework that has stood for 40 years, leaving many unanswered questions for in-house counsel. The shift curtails the broad regulatory power that federal agencies have used to implement Congressional acts without requiring additional legislation.

SCOTUS Term in Review: Key Takeaways for In-house Counsel

Join ACC on July 11 for a discussion of key cases from the Supreme Court’s term and their implications for in-house counsel. We will review recent decisions involving regulation, employment law, intellectual property, and commercial litigation. Get practical advice to help your organization stay compliant and manage risks.

SEC v. Jarkesy

Overview:

- On June 27, the Supreme Court stripped the Securities and Exchange Commission (SEC) of a key enforcement mechanism, invalidating the commission’s use of in-house legal proceedings against those suspected of committing fraud.
- In a 6-3 ruling, delivered by Justice Roberts, the court decided that the SEC’s reliance on internal tribunals — rather than federal courts — violated the Seventh Amendment right to be tried by a jury of one’s peers before a neutral adjudicator.
- “Rather than recognize that right, the dissent would permit Congress to concentrate the roles of prosecutor, judge, and jury in the hands of the Executive Branch,” Justice Roberts wrote in the majority opinion.

What it means: The ruling is one of several cases that aim to rein in the powers of the executive branch and its agencies’ regulatory enforcement. The decision may have far-reaching implications on how the SEC and other agencies act to curb corporate wrongdoing.

Corner Post v. Federal Reserve

Overview:

- On July 1, the Supreme Court held that a claim under the Administrative Procedure Act challenging an agency action comes into being when the plaintiff is injured by the final agency

action.

- In a 6-3 ruling, delivered by Justice Amy Coney Barrett, the court ruled that the statute of limitations for such a claim begins at the time of injury — extending the opportunity for such claims significantly.
- In her dissent, Justice Jackson wrote, “The tsunami of lawsuits against agencies that the Court’s holdings in this case and *Loper Bright* have authorized has the potential to devastate the functioning of the Federal Government.”

What it means: Taken alongside other cases decided this term, there will likely be an uptick in legal challenges to actions by federal agencies.

Ohio v. EPA

Overview:

- On June 27, the Supreme Court ruled in favor of three states — alongside energy companies and industry groups — to pause the so-called “good neighbor” rule from the Environmental Protection Agency (EPA).
- The EPA rule is meant to curb air pollution and harmful smog that travels across state lines, as a part of the Clean Air Act, but the 5-4 ruling, delivered by Justice Neil Gorsuch, questioned the implementation of the provision.

What it means: With its conservative majority, the Supreme Court has been skeptical of federal regulatory action, especially environmental rules.

Harrington v. Purdue Pharma

Overview:

- On June 27, a 5-4 majority of justices, with the opinion delivered by Justice Gorsuch, ruled that federal bankruptcy code does not authorize a liability shield for third parties in bankruptcy agreements.
- The decision jeopardizes a settlement in which the Sackler family, who controlled Purdue Parma, which made the prescription painkiller OxyContin, will no longer be subject to immunity from liability in opioid-related lawsuits.

What it means: The case has broader implications for bankruptcy settlements involving claims of mass injury. Bankruptcy settlements can no longer be used to shield third parties from liability.

Moody v. NetChoice and NetChoice v. Paxton

Overview:

- On July 1, the Supreme Court vacated both lower-court decisions in the NetChoice lawsuits stemming from laws in Florida and Texas that sought to limit moderation by social media platforms and other websites.
- Justice Elena Kagan wrote in the majority opinion that the appellate courts did not properly consider the facial nature of the challenges, focusing solely on the impact to large social media networks without a full analysis of the broader effects of both laws.
- The high court laid out principles for the lower courts to follow when assessing the constitutionality of the state laws. There were no dissenting opinions, though multiple justices filed concurring opinions.

What it means: The Supreme Court maintained that laws interfering with the editorial decisions of private online services — much like traditional publishers — require clearing a steep First Amendment hurdle.

Murthy v. Missouri

Overview:

- On June 26, the Supreme Court struck down a lower court's injunction against the Biden administration that would have stopped the government from communicating with social media companies in its efforts to curb misinformation.
- Justice Barrett, writing on behalf of the 6-3 majority, cited the lack of a "concrete link" between the actions of the federal government and the claimed "censorship" by the social media companies from which the plaintiffs sought relief.

What it means: The court delivered a stern rebuke to the US Court of Appeals for the Fifth Circuit for having entertained the plaintiff's lawsuit to begin with, given its dubious claims of "harm" to establish standing. "This Court has never accepted such a boundless theory of standing," Justice Barrett wrote.

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