



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

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On July 11, panelists representing a range of perspectives joined ACC to review several US Supreme Court decisions from the recently concluded 2023 term that stand to impact in-house counsel.

In a thought-provoking discussion, the panelists raised several critical takeaways from the Court's decisions this term. Mary Rouvelas, American Cancer Society's Cancer Action Network managing counsel and director of Legal Advocacy; Prianka Sharma, American Road and Transportation Builders Association's VP and counsel for Regulatory Affairs; Mara Zimmerman, American Petroleum Institute's senior counsel; and Tillman Breckenridge, a partner at Stris & Maher, all contributed to the conversation.

[ACC members: Register to watch the full program!](#)

Among the most impactful are the Court's decisions related to federal administrative law: [Loper Bright v. Raimondo](#) and [Relentless v. Department of Commerce](#), [Corner Post v. Board of Governors](#), and [SEC v. Jarkesy](#). The Court's decisions in these cases combine to create an environment that may limit agency discretion in the development and enforcement of federal regulations.

Potential ramifications cited by the panelists included everything from increased litigation, a rise in inconsistent district court decisions, enhanced specificity in proposed federal legislation, and incentives for agencies to promulgate middle-ground regulations that avoid lawsuits. To hear the full conversation, register for the program above.

[Catch-up quickly: US Supreme Court Rulings Will Impact In-house Counsel Duties](#)

Panelists noted that the Court's opinions in other cases, like [Starbucks v. McKinney](#) and [Ohio v. EPA](#), also serve to limit agency discretion. For example:

- In *Starbucks*, the Court required the National Labor Relations Board to apply the traditional [four-factor test](#) for preliminary injunctions to enforcement actions, rather than a more simplified two-step process.
- In *Ohio v. EPA*, the Court stayed a regulation pending litigation, preventing the US Environmental Protection Agency from implementing the rule.

While there is significant uncertainty as to how these cases will reshape administrative law in the United States, panelists had several suggestions for in-house counsel on how to approach the impacts from these decisions. Managing expectations about the speed with which regulations might be changed is important. Any changes to existing regulations will need to go through the Administrative Procedure Act's notice and comment rulemaking process. Likewise, educating staff — especially those in the organization who have a government affairs function — on how these decisions may affect legislative language and regulatory comments is also key. Given these recent decisions, in-house counsel may want to speak with business leaders to identify regulations that are adversely impacting the business. Although there are many open questions on how the lower courts will implement these rulings, the time may now be right to bring challenges to rules that are identified as onerous to the organization.

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