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Supreme Court Business Briefing

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SUPREME COURT BUSINESS BRIEFING

The Supreme Court's docket was dominated once again by high-profile disputes over President Trump's second-term agenda, many with profound implications for businesses. In one case, the Court rejected executive orders that imposed large and often fluctuating tariffs on imports from the country's many trading partners. The Court reaffirmed that Congress must authorize tariffs and found no authority in the emergency legislation the President invoked. In another case, the Court rejected an executive order attempting to end birthright citizenship—the traditional understanding that essentially all persons born on U.S. soil are citizens regardless of their parents' immigration status.

The President fared better in efforts to assert control over the Executive Branch. The Court overruled longstanding precedent that allowed Congress to insulate independent agencies like the Federal Trade Commission from presidential control. That decision will have substantial implications for business—among other things, it portends greater shifts in regulatory policies whenever the White House changes hands. The decision was qualified, however, as the Court carved out an exception for the Federal Reserve.

The Supreme Court's docket yielded other noteworthy business decisions too. The Court issued a crushing defeat to plaintiffs trying to sue multinational companies for human rights abuses under the Alien Tort Statute, adopting a sweeping rationale that will make it all but impossible to bring such claims in the future. The Court held that pesticide makers using EPA-approved product labels are shielded from state law failure-to-warn suits. It rejected a patent infringement claim against a generic drug maker selling products under an FDA-approved "skinny label." And in a case with major implications for both the telecommunications sector and the entertainment industry, the Court refused to hold an internet service provider liable for copyright infringement by its subscribers.

Federal agencies scored two wins for their enforcement programs. The Court held that the Securities and Exchange Commission may seek disgorgement of wrongful gains even when investors suffered no monetary loss. And it upheld the Federal Communications Commission's practice of assessing penalties through administrative proceedings, reasoning that parties could seek a jury trial if the agency tried to enforce the penalty. Those decisions are reminders that businesses in regulated industries must still exercise caution even in today's broadly deregulatory environment.

With those and other leading decisions in mind, we are pleased to present the sixteenth annual MoloLamken Supreme Court Business Briefing. We have identified cases with the greatest potential impact on a wide range of businesses. For each, we have distilled the facts and holdings to a concise summary and highlighted why the decision matters to business. Our aim is to allow busy people to stay current on the Supreme Court's docket and understand the potential impact of its decisions with a minimum of time and effort. We hope you find it informative.

ABOUT MOLOLAMKEN

MoloLamken is a law firm focused exclusively on representing clients in complex disputes and investigations. Our clients are based throughout the world.

Our founding partners, Steven Molo and Jeffrey Lamken, developed national reputations based on their courtroom successes while partners at large, full-service firms, where they held leadership positions. They formed the firm with an abiding belief that complex disputes and investigations are most effectively handled by smaller teams comprised of smart, highly experienced lawyers focused on results rather than process.

We provide experienced advocacy—for plaintiffs and defendants—before juries, judges, arbitral forums, and appellate courts, including the Supreme Court of the United States. We also represent clients in criminal and regulatory investigations, and we conduct internal investigations.

Our strength lies in the intellect, creativity, and tenacity of our lawyers and our experience in applying those attributes to achieve great results for clients in serious matters.

Learn more about our talented team by visiting us at www.mololamken.com.

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Cisco Systems, Inc. v. Doe, No. 24-856

human rights litigation — aiding and abetting

Cisco addressed whether the Alien Tort Statute and Torture Victim Protection Act authorize claims for aiding and abetting human rights violations.

The ATS and TVPA have often been used to sue multinational corporations for human rights abuses in foreign countries. Plaintiffs who suffered abuse at the hands of foreign officials would often claim that a corporate defendant aided and abetted the abuse by facilitating the officials' conduct. Enacted in 1789, the ATS provides federal jurisdiction over suits by foreign plaintiffs for torts committed in violation of international law. The TVPA, a more recent statute, expressly allows claims for certain acts of torture or extrajudicial killing.

This case arose out of Cisco's alleged development of surveillance technology that China used to track, apprehend, and torture members of the Falun Gong religious movement. Victims sued Cisco and two of its executives under the ATS and TVPA, claiming that they were responsible for aiding and abetting the abuses. The district court dismissed the suit, but the U.S. Court of Appeals for the Ninth Circuit reversed, holding that the plaintiffs could pursue claims for aiding and abetting under both the ATS and the TVPA.

The Supreme Court reversed. When Congress enacted the ATS, the Court explained, only a small number of international law violations could form the basis for a private lawsuit: violations of safe conducts, infringements of the rights of ambassadors, and piracy. The Court held that any new causes of action should be created by Congress, not the judiciary. In the Court's view, judicial creation of new causes of action threatens to interfere with U.S. foreign policy and usurp Congress's legislative role. Because the plaintiffs' ATS claim was not based on one of the three international law violations recognized at the statute's enactment, the claim had to be dismissed.

The Court likewise held that the TVPA does not permit claims for aiding and abetting. Although that statute permits claims against an individual who "subjects" another person to torture, the Court deemed that term insufficient to extend liability to aiders and abettors.

Cisco dramatically limits the avenues for bringing human rights claims against businesses. While most ATS suits ultimately failed even before *Cisco*, litigation under the statute was notoriously costly and generated bad publicity. *Cisco* all but eliminates plaintiffs' ability to bring such claims.

While *Cisco* will sharply reduce human rights litigation in U.S. courts, shareholder and public scrutiny is likely to continue. Investors in multinational companies have used the shareholder proposal process to require companies to report on their conduct in developing countries. The media and advocacy groups often highlight alleged abuses even absent litigation. *Cisco* thus does not diminish the importance of proceeding with care when doing business in the developing world.

(Disclosure: MoloLamken LLP represented amici curiae *in this case.)*

***Cisco** dramatically limits the avenues for bringing human rights claims against businesses.*

Cox Communications, Inc. v. Sony Music Entertainment, No. 24-171

copyright — online infringement

Cox addressed whether internet service providers may be held liable for contributory copyright infringement when their subscribers use their services for illegal file-sharing.

The Copyright Act grants copyright holders the exclusive rights to reproduce their works and to distribute or transmit them to the public. While the Act does not expressly render anyone liable for contributing to infringement by others, the Supreme Court has long recognized forms of secondary liability. A service provider may be liable for contributory infringement, for example, if it affirmatively induces infringement or sells a service specifically tailored to infringement.

Cox is an internet service provider that provides internet access to millions of subscribers. Sony is a major music copyright holder. Concerned that internet users were engaging in illegal file-sharing, Sony engaged a third party to track infringement to particular IP addresses. Over a two-year period, that third party notified Cox of more than 160,000 instances of infringement at IP addresses associated with Cox subscribers. Sony then sued Cox, claiming that Cox had contributed to the infringement by continuing to provide internet service despite notice of infringement. A jury awarded Sony over $1 billion in damages. The U.S. Court of Appeals for the Fourth Circuit upheld the verdict of contributory infringement, ruling that Cox could be held liable because it supplied a service despite knowing that subscribers would use it to infringe.

The Supreme Court reversed. The Court held that Cox was not liable for contributory infringement because it had neither induced users' infringement nor offered a service tailored to infringement. The Court saw no evidence that Cox had expressly promoted or marketed its service as a means to infringe. In fact, Cox had discouraged infringement by sending warnings and suspending or terminating certain accounts. Nor was Cox's internet service tailored to infringe—the service was clearly capable of substantial non-infringing uses. Merely supplying a service with knowledge that some subscribers would use it to infringe was not sufficient to establish liability.

Cox is a victory for internet service providers and other companies that offer online services. Many online services enable users to infringe by reproducing or streaming copyrighted works. Content owners have had little success combating that infringement by suing individual infringers. Suits against notorious piracy sites like Napster were more successful. But *Cox* precludes the extension of contributory liability to online services that have substantial lawful uses and are marketed on the basis of those lawful uses.

Cox will undoubtedly affect how content owners confront a changing technological landscape. After the Supreme Court rejected a copyright challenge to the VCR in 1984, video rental businesses thrived, offering content owners a new outlet for their works. More recently, some have credited licensed streaming services like Spotify with reducing the incentive for illegal file-sharing. By confirming the high bar for contributory infringement, *Cox* will likely force content owners to rely more on business solutions to protect their rights.

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FCC v. AT&T, Inc., No. 25-406

agency enforcement — jury trial rights

AT&T addressed whether the Seventh Amendment prohibits the Federal Communications Commission from imposing forfeiture orders without a jury trial.

The Communications Act authorizes the FCC to investigate apparent violations of the communications laws. This case arose from proceedings against two cellular carriers, AT&T and Verizon. After news reports revealed security breaches in the carriers' handling of subscriber location data, the FCC found that the carriers had failed to take reasonable steps to protect the data.

Under the Communications Act, the regulated company can dispute the allegations before the agency. If the agency nonetheless finds the company liable, it may issue a forfeiture order assessing a penalty. The company then has two options. It can seek administrative review in a court of appeals. Or it can refuse to pay, at which point the FCC may refer the matter to the Department of Justice to bring a civil suit to enforce the order. That proceeding is a "trial de novo" in which the company has a right to a jury trial and may relitigate the FCC's findings.

After the FCC assessed substantial penalties, AT&T and Verizon each sought review in a court of appeals. The U.S. Court of Appeals for the Fifth Circuit held that the agency proceedings violated the Seventh Amendment by denying the carrier a jury trial. But the Second Circuit disagreed on the ground that carriers can relitigate their claims in a jury trial in later enforcement proceedings.

The Supreme Court affirmed the Second Circuit's decision and reversed the Fifth Circuit's. The Court acknowledged that the Seventh Amendment preserves the right to a jury trial in suits at common law. But it held that the Seventh Amendment does not dictate the stage of a dispute at which the jury trial must occur. The FCC's proceedings were permissible because the agency's orders did not settle the carriers' legal obligations or create an obligation to pay. Instead, the government could compel payment only by proving its case to a jury in a later civil action.

AT&T is an important decision for businesses regulated by federal agencies. Two years ago, in a case called *Jarkesy*, the Court held that the SEC could not impose civil monetary penalties for securities fraud in its in-house administrative proceedings. *AT&T* clarifies the scope of that decision, allowing agencies to adjudicate disputes so long as businesses can seek a jury trial at a later stage.

Agencies often prefer to bring enforcement proceedings before in-house adjudicators who may be more sensitive to the agency's priorities. Conversely, many regulated businesses would prefer to litigate disputes before a jury in court. By allowing agencies to decide disputes administratively in the first instance, *AT&T* restores a significant measure of agency authority. Even if a business may succeed in overturning an agency decision before a jury later on, a forfeiture order may have serious reputational consequences. The power to issue such orders thus gives agencies a significant source of leverage over the businesses they regulate.

***AT&T** gives agencies a significant source of leverage over the businesses they regulate.*

Flowers Foods, Inc. v. Brock, No. 24-935

Federal Arbitration Act — transportation worker exemption

Flowers Foods addressed whether the Federal Arbitration Act's exemption for transportation workers applies to workers who do not cross state lines or interact with vehicles that do.

The FAA requires courts to enforce most private arbitration agreements. The Act creates an exception, however, for employment contracts of transportation workers "engaged in foreign or interstate commerce."

This case arose from an employment dispute between Flowers Foods, maker of Wonder Bread and other packaged baked goods, and local delivery franchisee Angelo Brock. Flowers Foods makes its products in bakeries throughout the country and delivers them to warehouses. Local franchisees then deliver the products to retail stores. Brock picked up and delivered goods entirely within Colorado.

Brock's distribution agreement with Flowers Foods included a mandatory arbitration clause. When Brock sued for alleged labor law violations, Flowers Foods moved to compel arbitration. Brock opposed arbitration, invoking the FAA's transportation worker exemption. He argued that he was engaged in interstate commerce because he transported goods in the final leg of an interstate supply chain. Flowers Foods countered that the exemption did not apply to Brock because he operated entirely within Colorado.

The district court denied Flowers Foods' motion to compel arbitration. The U.S. Court of Appeals for the Tenth Circuit affirmed. It held that, even though Brock never crossed state lines or interacted with vehicles that did, his intrastate activities were part of a broader interstate journey delivering baked goods made in out-of-state bakeries. The court therefore lacked authority to compel arbitration under the FAA.

The Supreme Court affirmed. It held that the FAA's transportation worker exemption does not impose a bright-line rule that workers must cross state lines or interact with vehicles that do. Being "engaged in . . . interstate commerce," the Court explained, requires only being actively involved in the interstate transport of goods. Workers may have sufficient involvement in that transport, and therefore qualify for the transportation worker exemption, even if they carry goods only on an intrastate leg of an interstate journey.

Flowers Foods is the latest in a series of Supreme Court cases rejecting attempts to limit the scope of the FAA's transportation worker exemption. Although the Court has a history of pro-arbitration decisions in many contexts, *Flowers Foods* is the fourth decision in the last decade to construe the transportation worker exemption broadly.

Flowers Foods may provoke more litigation over whether employment disputes with transportation and delivery workers are subject to arbitration. Millions of people now work in e-commerce and the gig economy, performing countless different roles. The courts of appeals have struggled to determine when such workers are "engaged in . . . interstate commerce," often reaching inconsistent results. By rejecting a bright-line rule, *Flowers Foods* leaves parties to litigate those disputes on a case-by-case basis.

***Flowers Foods** is the latest in a series of Supreme Court cases rejecting attempts to limit the scope of the FAA's transportation worker exemption.*

FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd., No. 24-345

Investment Company Act — implied right of action

FS Credit addressed whether Section 47(b) of the Investment Company Act creates a private right of action for parties seeking to rescind contracts that allegedly violate the statute.

The ICA comprehensively regulates investment companies like mutual funds that issue securities to investors and then use the invested funds to purchase other securities. Section 47(b) provides that "a court may not deny rescission" of a contract that violates the ICA "at the instance of any party" unless doing so would be consistent with equity and the goals of the statute.

FS Credit is an investment company that manages closed-end mutual funds. Closed-end funds issue a fixed number of shares, which then trade on the open market. Activist investors can potentially gain control of such funds and seek new management or other changes by buying up a majority of the shares. To avoid that prospect, FS Credit's funds adopted resolutions opting into a Maryland law that purports to restrict the voting rights of shareholders who acquire a substantial number of shares.

Saba Capital Master Fund, a self-proclaimed activist investor that owned shares in FS Credit's funds, sued FS Credit under Section 47(b). It sought rescission of the funds' resolutions, arguing that they violated an ICA provision requiring that every share issued by an investment company have equal voting rights. The district court granted summary judgment to Saba, and the U.S. Court of Appeals for the Second Circuit affirmed.

The Supreme Court reversed, holding that Section 47(b) does not provide a private right of action to investors like Saba. The Court explained that Congress must ordinarily determine who may sue to enforce a federal law, and that when Congress intends to create a private right of action, it usually does so expressly. The Court found that Section 47(b) contained no such language. Section 47(b) is phrased in terms of judicial authority, not the rights of private individuals. And the provision's subject—rescission—was historically a remedy, not a cause of action. Thus, while Section 47(b) may allow a party that is otherwise properly before a court to seek rescission, it does not confer a right to sue in the first place.

FS Credit is a win for mutual funds and other companies that manage investments. The ICA imposes a stringent regulatory regime on investment companies, addressing everything from governance, to capital structure, to daily operations. Precluding private enforcement of those provisions through suits under Section 47(b) reduces a potential source of litigation.

Investors who entrust their funds to those investment companies may view the Court's decision as a loss. Because closed-end fund investors cannot demand that the fund redeem their shares for cash, the closed-end structure makes it harder for investors to hold underperforming fund managers accountable. The Court's decision eliminates one mechanism for investors to challenge fund management decisions.

FS Credit *eliminates one mechanism for investors to challenge fund management decisions.*

Havana Docks Corp. v. Royal Caribbean Cruises, Ltd., No. 24-983

Helms-Burton Act — trafficked property

Havana Docks addressed liability for trafficking in confiscated property under the Helms-Burton Act.

In 1996, following an increasingly strained relationship with Cuba, Congress enacted the Cuban Liberty and Democratic Solidarity Act, better known as the Helms-Burton Act. The Act sought to compensate U.S. nationals whose property was taken by Cuba's communist government following the 1959 revolution and to prevent the regime from profiting from the expropriations. It imposes civil liability, including potential treble damages, on anyone who "traffics in property which was confiscated" by the Cuban government. Successive U.S. Presidents exercised authority to suspend the Act for many years, but President Trump allowed it to go into effect in 2019.

Havana Docks is a U.S. corporation. In 1928, it obtained a concession from Cuba's government permitting it to develop, operate, and profit from dock facilities in the Port of Havana until 2004. Havana Docks' control over those facilities was cut short in 1960, when the new Cuban government seized the docks by force.

Decades later, Havana Docks sued four U.S.-based cruise lines under the Helms-Burton Act, alleging that they trafficked in its confiscated property by using the docks to load and unload passengers between 2016 and 2019. The district court ruled for Havana Docks, awarding over $100 million from each cruise line. The U.S. Court of Appeals for the Eleventh Circuit reversed. It held that the cruise lines could not be held liable because, even absent the confiscation, Havana Docks' property interest would have expired in 2004, before the cruise lines used the docks.

The Supreme Court vacated the court of appeals' decision. It held that the Helms-Burton Act imposes liability not just for trafficking in confiscated property interests, such as Havana Docks' since-expired concession, but also for trafficking in the seized physical property underlying the interest, such as the docks themselves. Because the cruise lines trafficked in the docks the Cuban government confiscated in 1960, they could be held liable.

Havana Docks expands potential liability under the Helms-Burton Act for certain companies doing business relating to Cuba. Companies using facilities that were operated by U.S. nationals before the Cuban revolution risk substantial penalties, even if the plaintiff's interest expired long ago.

Because the Helms-Burton Act was allowed to go into effect only recently, disputes about its scope are just now reaching the Supreme Court. In another case this term, *Exxon Mobil v. Corporación Cimex*, the Court held that the Act abrogates the sovereign immunity of Cuban agencies and instrumentalities. Plaintiffs thus may sue those entities without satisfying the requirements that usually apply to suits against foreign state entities. Both *Havana Docks* and *Exxon* offer new avenues of relief for U.S. businesses whose assets were expropriated by the Castro regime.

Havana Docks *expands potential liability under the Helms-Burton Act for certain companies doing business relating to Cuba.*

Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc., No. 24-889

patent infringement — skinny labels

Hikma addressed when pharmaceutical companies selling generic drugs under a "skinny label" may be liable for inducing patent infringement.

Federal law provides for streamlined approval of generic drugs with the same active ingredients and therapeutic effects as a previously approved brand-name drug. The Food and Drug Administration will not approve a generic if it infringes patents held by the maker of the brand-name drug. But if the patents cover only certain methods of using the drug, the FDA can approve the generic for non-patented uses. The generic must sell the drug under a "skinny label" that carves out the patented uses but is otherwise identical to the branded drug's labeling.

This case involved Hikma's generic version of Amarin's drug Vascepa. The FDA has approved Vascepa for treatment of two conditions: severe hypertriglyceridemia and cardiovascular risk in patients taking statins. Amarin's patent covered only the treatment for cardiovascular risk. Hikma obtained approval to sell its generic under a skinny label that carved out that use.

Amarin sued, alleging that Hikma was liable for inducing doctors to infringe its patent. Amarin argued that, despite the skinny label, Hikma encouraged doctors to prescribe generic Vascepa for the patented cardiovascular use. It pointed to statements on the label that contained information about a clinical study relevant to the cardiovascular use, a patient leaflet noting that medicines are sometimes prescribed for off-label uses, and statements describing the drug as "generic Vascepa." The district court dismissed the complaint. But the U.S. Court of Appeals for the Federal Circuit reversed, concluding that a physician could interpret Hikma's statements as encouragement to prescribe the drug for the patented use.

The Supreme Court reversed. The Court explained that a plaintiff claiming induced infringement must show that the defendant took active steps to bring about another person's infringement. It is not enough that someone might interpret the defendant's statements as encouragement to infringe.

The Court held that Amarin had not plausibly alleged that Hikma took active steps to induce infringement. Hikma's statements on the label were required by law. The statements in the patient leaflet were too vague. And it was normal industry practice to describe a generic as equivalent to its brand-name competitor.

Hikma provides generic drug manufacturers breathing room to avoid claims for induced patent infringement when they market drugs under a skinny label. Several of the statements Amarin pointed to as evidence of induced infringement could be alleged against many generics selling their products under a skinny label, and some were required by law. After *Hikma*, those actions are insufficient by themselves to support liability.

Conversely, *Hikma* is a significant loss for brand-name drug manufacturers. Doctors generally may prescribe drugs for off-label uses. They thus have incentives to prescribe a cheaper generic for a patented treatment method regardless of the approved uses on the skinny label. *Hikma* makes it more difficult for brand-name drug companies to recover for such infringement.

***Hikma** provides drug manufacturers breathing room to avoid claims for induced patent infringement when they market generic drugs under a skinny label.*

Learning Resources, Inc. v. Trump, No. 24-1287

international trade — tariffs

Learning Resources addressed whether the President has authority to impose worldwide tariffs under the International Emergency Economic Powers Act.

IEEPA permits the President to declare a national emergency in response to an "unusual and extraordinary threat" to the nation's security, foreign policy, or economy. The President may then take a variety of steps to respond to the threat. Among other things, the statute allows the President to "regulate" importation.

Shortly after taking office, President Trump declared two national emergencies under IEEPA: one based on the purported influx of illegal drugs from Canada, Mexico, and China, and another based on large, persistent trade deficits with countries all around the world. Based on the first declared emergency, President Trump imposed tariffs of 25% on imports from Canada and Mexico and 10% on imports from China. Based on the second, he imposed tariffs of 10% or more on every U.S. trading partner worldwide. Later orders raised and lowered those rates for different countries and goods.

Businesses and States challenged the tariffs in multiple courts, arguing that the President lacked authority to impose them. The Administration responded that the tariffs were a permissible exercise of the President's power to "regulate" importation under IEEPA. The U.S. Court of International Trade disagreed and held the tariffs unlawful. The U.S. Court of Appeals for the Federal Circuit affirmed.

The Supreme Court affirmed. The Court held that, although IEEPA authorizes the President to do many things upon declaring an emergency, it does not authorize taxes or tariffs. The Court noted that statutes allowing the Executive Branch to impose tariffs do so expressly and subject to strict limits, whereas IEEPA neither mentions tariffs nor provides conditions for imposing them. And while the word "regulate" is broad, the Court held that it does not typically include the power to impose taxes.

Learning Resources is a victory for the many U.S. companies that rely on imports to run their businesses. The President's IEEPA tariffs imposed substantial duties on goods from every country in the world, with some rates as high as 145% and total duties estimated at up to $4 trillion over ten years. The Supreme Court's decision eliminates that significant cost to businesses. At the same time, it removes the protection from foreign competition that the tariffs provided to some businesses with U.S. manufacturing operations.

While *Learning Resources* rules out tariffs under IEEPA, tariffs remain a central focus of the Trump Administration's economic policy. The President has already sought to impose tariffs under other statutes that expressly allow tariffs in some circumstances. Those tariffs are more limited than the ones the Supreme Court invalidated and may stand on firmer legal footing, although they too have been challenged in court. Whatever the outcome, it is clear that tariff policy will be a concern for many businesses in the coming years.

Learning Resources *is a victory for the many U.S. companies that rely on imports to run their businesses.*

Monsanto Co. v. Durnell, No. 24-1068

preemption — labeling requirements

Monsanto addressed whether the Federal Insecticide, Fungicide, and Rodenticide Act preempts state law failure-to-warn claims involving labels for pesticides like Roundup.

FIFRA requires pesticides to be registered with the Environmental Protection Agency. Before registering a pesticide, EPA must determine that the product and its label comply with FIFRA. Among other things, the pesticide's label must include all warnings necessary and adequate to protect human health and the environment. EPA regulations then require the manufacturer to use the EPA-approved label unless and until the agency approves a change. FIFRA also includes a preemption clause, which provides that States may not impose labeling requirements "in addition to or different from" those required under FIFRA.

In this case, John Durnell sued Monsanto in Missouri state court, alleging that Monsanto's Roundup pesticide caused his non-Hodgkin's lymphoma. Roundup's active ingredient is glyphosate, which the International Agency for Research on Cancer has classified as a probable carcinogen. EPA has disagreed with that classification and has not required Roundup's label to include a cancer warning.

Durnell brought a failure-to-warn claim under Missouri law, arguing that Roundup's label should have included a cancer warning. The jury agreed and awarded him more than $1 million in damages. The Missouri Court of Appeals affirmed, rejecting Monsanto's argument that FIFRA preempted Durnell's claim. The court held that Missouri failure-to-warn claims do not impose requirements in addition to or different from FIFRA's because both require pesticide manufacturers to adequately warn users of health dangers associated with their products.

The Supreme Court reversed. The Court explained that labeling requirements under FIFRA include the EPA regulations that require pesticides to use the label approved by EPA. Because the EPA-approved Roundup label did not include a cancer warning, Durnell's failure-to-warn claim attempted to impose a requirement in addition to or different from those imposed under FIFRA. The claim was therefore preempted. The Court rejected Durnell's argument that his failure-to-warn claim was consistent with FIFRA because both require a label adequate to protect human health. That argument failed to account for the specific labeling requirements imposed by EPA regulations.

The Court's ruling has monumental consequences for Monsanto, which has faced nearly 200,000 Roundup lawsuits. More broadly, it ensures that using an EPA-approved label will shield pesticide makers from state law failure-to-warn liability. While many recent Supreme Court decisions have protected state authority against federal agency intrusion, *Monsanto* shows that the Court will vigorously enforce statutes that expressly allow federal agencies to displace state law.

The decision also has important implications for other regulated businesses. Federal laws covering a wide range of industries—such as medical devices, drugs, food, and cosmetics—include labeling preemption provisions similar or identical to FIFRA's. After *Monsanto*, those provisions will likely provide significant protection against state law failure-to-warn claims.

(Disclosure: MoloLamken LLP represented amici curiae *in this case.)*

*After **Monsanto**, many federal labeling requirements will likely provide significant protection against state law failure-to-warn claims.*

Sripetch v. SEC, No. 25-466

securities enforcement — disgorgement

Sripetch addressed whether the Securities and Exchange Commission can seek disgorgement requiring a wrongdoer to turn over illicit profits, even absent monetary harm to victims.

The SEC has long sought disgorgement of wrongful gains, among other remedies, when enforcing the federal securities laws. Originally, the SEC invoked courts' inherent equitable authority. More recently, Congress expressly authorized the SEC to seek "any equitable relief that may be appropriate or necessary for the benefit of investors" and, specifically, "disgorgement." In a prior case, the Supreme Court held that disgorgement must be limited to the defendant's net profits and must ordinarily be distributed to victims, not the U.S. Treasury. But the Court had not previously decided whether courts may order disgorgement even when victims suffer no loss.

This case arose from a civil enforcement proceeding against Ongkaruck Sripetch. Sripetch defrauded investors by engaging in "pump and dump" schemes in which he and his co-conspirators obtained shares of penny-stock companies, promoted the companies to others, and then sold their own shares after the price rose. The SEC charged Sripetch with securities fraud. Sripetch consented to a judgment against him, but objected to the SEC's demand for disgorgement. Because the SEC did not prove that investors lost money, he argued, there were no "victims" to whom disgorgement could be awarded. The district court ordered disgorgement, and the U.S. Court of Appeals for the Ninth Circuit affirmed, holding that the SEC could seek disgorgement even absent a showing of pecuniary harm.

The Supreme Court affirmed. The Court held that pecuniary loss to investors is not required for the SEC to obtain a disgorgement award. Courts sitting in equity, it observed, have long imposed remedies designed to deprive wrongdoers of profits from their unlawful activities. The point of such remedies is to strip the defendant of wrongful gains, not to compensate the plaintiff for a financial loss.

Sripetch preserves the SEC's broad authority to seek disgorgement in enforcement proceedings against businesses. The agency will be able to seek substantial monetary remedies when a business defrauds investors even without proof that investors suffered losses. The SEC has filed fewer enforcement proceedings overall under the current Administration. But *Sripetch* ensures that it can seek a broad range of remedies in the enforcement cases it chooses to bring.

The Court left unresolved whether a defendant may demand a jury trial on disgorgement claims. The Supreme Court recently held that defendants have a right to a jury trial when the SEC seeks civil penalties for securities fraud. Some courts have distinguished disgorgement as an equitable remedy to which the jury trial right does not apply. But Justice Thomas's separate concurrence in *Sripetch* urges that SEC disgorgement is a legal rather than equitable remedy. As a result, the SEC may still court controversy when seeking this form of relief.

***Sripetch** preserves the SEC's broad authority to seek disgorgement from wrongdoers, even when victims suffer no monetary harm.*

Trump v. Barbara, No. 25-365

Fourteenth Amendment — birthright citizenship

Barbara addressed whether the Fourteenth Amendment's Citizenship Clause guarantees citizenship to children born in the United States, even if their parents were in the country unlawfully or temporarily.

The Citizenship Clause provides that "[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." That clause has long been understood to guarantee citizenship to any person born in the United States, with only narrow exceptions for persons not subject to U.S. jurisdiction, such as the children of foreign diplomats. In recent years, however, birthright citizenship has drawn controversy from some who urge that it encourages or rewards unlawful immigration.

On the first day of his second term, President Trump issued an executive order declaring that children born in the United States would no longer be considered citizens if their parents were unlawfully or only temporarily present in the United States. The order asserted that such children are not truly subject to U.S. jurisdiction, and directed federal agencies not to issue government documents like passports to those children. Parents and civil rights groups filed a number of lawsuits challenging that order.

This case arose out of a suit filed in New Hampshire. The district court certified a nationwide class of children who would be denied citizenship by the order and enjoined the order's enforcement. The government appealed to the U.S. Court of Appeals for the First Circuit, and the Supreme Court granted review before judgment.

The Supreme Court then affirmed. The Court explained that the Citizenship Clause was adopted in the wake of the Civil War to overturn a decision that denied citizenship to the children of freed slaves. But the clause reflected broader principles of English common law. Under the ancient rule of *jus soli*, or "right of the soil," all persons born in the king's dominions owed a duty of allegiance to the king, and the king in return owed a duty of protection. The common law recognized only narrow exceptions—for example, children of foreign ministers or occupying military forces.

The Court held that the Citizenship Clause adopted those common law principles. Its reference to "[a]ll persons born . . . in the United States" tracked the traditional territorial standard, and the language about persons "subject to the jurisdiction thereof" excluded only those falling within the narrow common law exceptions. Because no traditional exception applies to children of parents unlawfully or temporarily present in the country, the Citizenship Clause makes those children citizens at birth.

Barbara is a landmark civil rights decision on United States citizenship, but also has important business implications. Studies estimate that more than three million Americans benefit from birthright citizenship and will contribute trillions of dollars to the economy over their lifetimes. Birthright citizenship ensures that the children of immigrants may integrate into the legal workforce at a time when birthrates among U.S. citizens are at historic lows. Businesses recruiting skilled workers from abroad can also rely on the guarantee of U.S. citizenship for American-born children as an incentive to work here.

Barbara *is a landmark civil rights decision on United States citizenship, but also has important business implications.*

Trump v. Slaughter, No. 25-332

separation of powers — independent agencies

Slaughter addressed the President's power to remove the heads of federal administrative agencies.

In 1926, the Supreme Court held that the President generally may remove executive officials at will. Nine years later, however, the Court held in *Humphrey's Executor* that Congress could limit the President's power to remove members of the Federal Trade Commission, an agency it viewed as exercising only quasi-legislative or quasi-judicial powers.

Since then, the leaders of numerous "independent" agencies have enjoyed for-cause removal protections that insulate them from presidential control. But the Supreme Court has cut back on *Humphrey's Executor* in recent years, essentially limiting the decision's holding to agencies structured as multimember commissions like the FTC.

Slaughter arose out of President Trump's decision to fire Rebecca Slaughter, a Commissioner of the FTC, on the ground that her service was inconsistent with his Administration's priorities. Slaughter sued for reinstatement, arguing that the FTC Act allowed the President to fire Commissioners only for inefficiency, neglect of duty, or malfeasance in office, not for mere policy disagreements. President Trump defended the removal, arguing that the statute unconstitutionally limited his ability to oversee the Executive Branch. The district court ordered Slaughter reinstated. The U.S. Court of Appeals for the D.C. Circuit denied a stay pending appeal, concluding that it was still bound by *Humphrey's Executor*.

The Supreme Court reversed and overruled *Humphrey's Executor*. The Court explained that the Constitution's separation of powers vests the entire executive power in one President. To ensure that those who assist the President in wielding that power remain accountable, the Constitution generally requires that the President be able to remove executive officers at will. The FTC, the Court held, wields extensive executive power: It enforces and administers eighty different federal statutes, issuing regulations, investigating businesses, and suing on behalf of the United States. Accordingly, the President must be able to remove FTC Commissioners at will.

Slaughter hands the President more control over federal agencies. Before *Slaughter*, for-cause removal restrictions limited the President's ability to influence multimember commissions like the FTC and SEC. Now, the President can remove any member based on mere policy disagreements. After *Slaughter*, businesses are likely to see greater swings in federal regulation and enforcement with each change of Administration.

Some limits on the President's removal power remain. In *Trump v. Cook*, issued the same day as *Slaughter*, the Supreme Court rebuffed President Trump's attempt to remove a Governor of the Federal Reserve. The Court approved for-cause removal protections for the Federal Reserve, citing the nation's unique history of independent central banking insulated from political pressure. *Slaughter* also left for another day whether Congress may provide tenure protections to adjudicators on Executive Branch tribunals like the Tax Court and the Court of Federal Claims. Moreover, *Slaughter* involved a high-ranking principal officer. It remains to be seen whether the Court will extend the case's holding to inferior officers, many of whom have civil service or other removal protections.

*After **Slaughter**, businesses are likely to see greater swings in federal regulation and enforcement with each change of Administration.*

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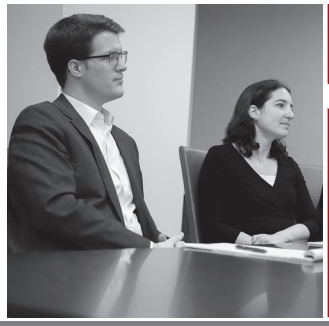

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