Supreme Court Developments

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Even as President Biden has appointed a commission to study potential institutional reforms of the U.S. Supreme Court, his administration's most immediate impact at the Court came through a flurry of filings early this year in which the government changed its position on several policies at the heart of pending cases. The Court removed two cases from its February 2021 oral argument calendar, *Pekoske v. Innovation Law Lab* and *Biden v. Sierra Club*, both of which involved challenges to Trump administration border control policies that the new administration promptly abandoned. Just two weeks after the Court had granted *certiorari*, it likewise dismissed another immigration case, *Department of Homeland Security v. New York*, at the Biden administration's request.

Officials from the Biden administration also have asked the Court to dismiss a trio of challenges to Trump-era regulations barring health clinics that receive federal family-planning funds from providing abortion referrals, explaining that the Department of Health and Human Services may rescind the regulations. And in *Texas v. California*, the United States filed a letter urging the Court to uphold the Affordable Care Act in its entirety, a complete shift from the Trump administration's refusal to defend the law. While that change was not surprising, the new administration has also shifted positions unexpectedly, including through a letter submitted the day the White House's merits brief was due in *Terry v. United States*, a case about sentencing reductions for crack cocaine offenses. The letter stated that the United States had reconsidered its position and, contrary to its *certiorari*-stage brief, would no longer defend the court of appeals' judgment. The Biden administration's actions, especially in *Terry*, suggest it will not be shy in asserting fundamentally different positions from its predecessor's in pending matters before the Court.

As businesses monitor new regulatory developments, several administrative law decisions will affect potential future legal challenges. *Federal Communications Commission v. Prometheus Radio Project*, for example, upheld an FCC regulation in the face of criticism that the agency relied on incomplete and imperfect data. The Court explained that the Administrative Procedure Act does not require agencies to conduct their own studies or research. And *U.S. Fish and Wildlife Service v. Sierra Club* recognized robust protection of agency opinions and in-house materials from disclosure under the Freedom of Information Act. These and other forthcoming decisions will continue to shed light on how the current justices approach regulatory action, as well as shape businesses' strategies for crafting challenges to regulations.

By the end of this term, the Court will issue decisions in a number of other cases impacting business interests. In the class action arena, it will consider the appropriate test for determining whether to certify a class of shareholders in lawsuits alleging securities fraud (*Goldman Sachs Group Inc. v. Arkansas Teacher Retirement System*) and whether damages class actions can proceed when most class members were not harmed at all, much less in a way similar to the class representative (*TransUnion LLC v. Ramirez*). In the realm of intellectual property, the Court will consider the validity of "assignor estoppel," which prevents an inventor who has assigned a patent from later contesting the patent's validity (*Minerva Surgical Inc. v. Hologic Inc.*). Other pending decisions may have broad effects on commercial litigation, including the Court's resolution of whether district courts have discretion to deny or reduce an award of costs following a successful appeal (*City of San Antonio, Texas v. Hotels.com*). All of these cases will provide insight into Justice Amy Coney Barrett's voting, as well as emerging alignments in the newly constituted Court. Those patterns will continue to evolve, particularly if President Biden has the opportunity to fill one or more vacancies.