Supreme Court's 2024 business questions hinge on statutory interpretation

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The Supreme Court's 2024 Term is teed up to be another significant one for businesses. Last Term, the Justices issued consequential decisions on a wide range of topics affecting companies, including administrative law, arbitration, labor and employment, bankruptcy, and the First Amendment's application to websites hosting third-party content.

In particular, the Court's decisions overruling *Chevron* deference, opening the door to Administrative Procedure Act challenges to agency actions previously considered settled, and restricting the Securities and Exchange Commission's use of in-house courts will reverberate through the lower courts for decades to come.

But the 2024 Term promises to be impactful for businesses, as well. The docket so far includes a host of questions arising in key areas of the law like securities fraud, trademark infringement, civil procedure, and administrative law.

The Court will also confront substantial questions affecting securities fraud actions. In *Facebook v. Amalgamated Bank*, the Court will consider whether public companies need to disclose risks that have materialized in the past but present no known present or future harm. And in *NVIDIA Corporation v. Ohman*, the Justices will clarify the pleading standards governing securities-fraud claims that rely on internal company documents — that the plaintiffs haven't actually seen — to show a company's knowledge or intent.

One common thread running through this Term's business cases is statutory interpretation: The Justices will consider the scope of several key statutes that broadly affect companies.

In *Wisconsin Bell v. United States ex rel. Heath*, the Justices will grapple with what constitutes a "claim" under the False Claims Act (FCA). Designed to safeguard government funds, the FCA imposes civil liability for false or fraudulent claims against the United States or its agents. It is a potent tool, with settlements and judgments under the FCA having exceeded $2 billion in 2023.

Wisconsin Bell arises in the somewhat niche context of the so-called E-rate program, which was established by the Federal Communications Commission to provide discounted services to eligible libraries and schools. But the Court's resolution of *Wisconsin Bell* could have broader implications for FCA liability.

Administered by a private nonprofit corporation, the E-rate program is funded by statutorily required contributions from private telecommunications providers. Todd Heath sued Wisconsin Bell, claiming that the company violated the FCA by charging schools and libraries too much under the E-rate program, rendering each reimbursement request a false claim.

Wisconsin Bell moved to dismiss the suit, arguing that the alleged submissions didn't qualify as "claims" under the FCA because they didn't involve government funds (since the E-rate program is funded by contributions from private companies) or requests to government agents (since the program is administered by a private entity). The 7th U.S. Circuit Court of Appeals disagreed, and Wisconsin Bell persuaded the Court to grant cert.

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While the Justices' decision in this case obviously will impact companies participating in the E-rate program, the Court's construction of "claims" under the FCA could have ramifications for FCA liability more generally. A host of government programs are funded by private money, and the Justices' decision could implicate whether those programs involve "claims" covered by the FCA.

The ruling also may affect whether fraud at self-funded agencies (the U.S. Post Office, for example) can be remedied under the FCA. The decision may even have repercussions for prosecuting Medicare fraud, the largest sector of FCA recoveries.

In another case significant for businesses, the Court will consider the scope of RICO's civil treble-damages provision — specifically, whether economic damages arising from personal injuries are injuries to "business or property."

Medical Marijuana, Inc. v. Horn arises from Daniel Horn's consumption of a cannabis-derived product that Medical Marijuana

marketed as "THC-free" (meaning free of tetrahydrocannabinol, the active chemical in marijuana). Horn subsequently failed a drug test, which detected the presence of THC, and lost his job as a commercial truck driver. He sued Medical Marijuana, claiming that the company's false advertising constituted mail and wire fraud — a violation of RICO (Racketeer Influenced and Corrupt Organizations Act) — and that his resulting termination was an injury to his business or property.

The 2nd U.S. Circuit Court of Appeals agreed, holding that an economic harm resulting from personal injuries suffices for civil RICO liability.

The Justices agreed to take up the case, which they will hear on Oct. 15. Their decision could have ramifications for businesses in civil RICO suits by potentially expanding the scope of the statute's prohibitions to reach personal injury cases involving pecuniary harm.

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The Court will also consider the scope of another consequential statute for businesses: the Fair Labor Standards Act (FLSA). In *E.M.D. Sales, Inc. v. Carrera*, the Justices will decide what burden of proof an employer must satisfy to demonstrate that it is exempt from the FLSA's general requirement that it pay employees overtime for working more than 40 hours per week.

Three sales representatives of E.M.D. Sales, which distributes Latin American, Caribbean, and Asian foods to grocery stores in the Washington, D.C., area, contended they were entitled to overtime because they worked 60 hours per week. But E.M.D. Sales claimed that the workers were exempt from the FLSA's overtime requirement as "outside salesmen."

The Justices agreed to decide what burden a company must meet to show that the FLSA exemption applies: "clear and convincing evidence," or a less demanding preponderance of the evidence. The 4th U.S. Circuit Court of Appeals adopted the more stringent "clear and convincing evidence" standard, and the Justices granted cert, but only after soliciting the United States' views.

While the Solicitor General's brief urged the Justices to take up the case, it also argued that the 4th Circuit's decision was so misguided to warrant summary reversal. Although the Justices did not abide by the so-called "sum rev" recommendation, they did agree to hear the case, and the government's confidence that the 4th Circuit was wrong may bode well for the company. Regardless of how the Justices rule, their decision is one to watch because of its ramifications for businesses defending against FLSA claims.

Finally, virtually every Term has at least one administrative law question. The 2024 Term is no exception.

On Oct. 4, the Justices granted cert in *Nuclear Regulatory Commission (NRC) v. Texas* to consider the NRC's authority to issue licenses to private parties for temporary nuclear-waste storage. Resolving this case will likely require the Court to revisit its 2022 decision in *West Virginia v. EPA*, which embraced the so-called major questions doctrine and held that an agency lacks authority to make decisions on "major questions" of extraordinary economic and political significance unless Congress "clearly" grants it that power. *NRC* asks whether "[d]isposal of nuclear waste is an issue of great 'economic and political significance'" and, if so, whether the Energy Act and the Nuclear Waste Policy Act delegate decisionmaking authority on the matter to the NRC.

Another administrative law case, *FDA v. Wages and White Lion Investments* involves a challenge to the Food and Drug Administration's denial of applications to market new e-cigarette products. The FDA found that the companies seeking approval failed to show that marketing the products would be "appropriate for the protection of the public health" — a statutory requirement for authorization. 21 U.S.C. § 387j(c)(2)(A).

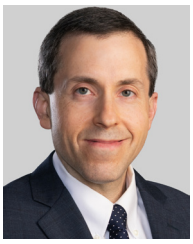
But the en banc 5th U.S. Circuit Court of Appeals — splitting from seven other circuits — ruled that the FDA's decision was arbitrary and capricious, in part because the agency had shifted its position on what types of evidence would satisfy the authorization requirements.

The case may provide an opportunity for the Justices to apply last Term's administrative law decisions as they grapple with agency procedures, who gets to decide what is "appropriate for the protection of the public health" (agencies or Congress), and how those decisions should be made. Depending on how the Justices rule, their decision could open up new avenues for challenging agency action.

Business cases often allow room for the Justices to find common ground without sacrificing their individual ideologies or worldviews, especially compared to other questions on the docket (such as this Term's cases about minors' access to gender-affirming therapies or the regulation of ghost guns). And with so many of this Term's corporate questions focused on statutory interpretation — an exercise where all of the Justices espouse textualism — we wouldn't be surprised to see the 2024 Term's business cases generate narrow decisions with particularly high levels of consensus.

Shay Dvoretzky and Emily Kennedy are regular, joint contributing columnists on the U.S. Supreme Court for Reuters Legal News and Westlaw Today.

About the authors



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