

The Supreme Court – June 30, 2022

by Ian Blodger

Today, on the final day of the current term, the Supreme Court of the United States issued two decisions:

West Virginia v. EPA, No. 20-1530 (and consolidated cases): This case concerns the scope of the Environmental Protection Agency's (EPA) authority to impose carbon dioxide emission standards under Section 111(d) of the Clean Air Act, a provision governing air emissions from certain coal- and gas-fired power plants. In 2015, under the Obama Administration, the EPA promulgated the Clean Power Plan rule, which required, among other things, certain existing coal-fired power plants to reduce their own production of electricity, or subsidize increased generation by natural gas, wind, or solar sources. In 2019, the Trump Administration's EPA repealed the Clean Power Plan and issued a new Affordable Clean Energy (ACE) Rule, establishing a different set of emission guidelines for existing coal-fired plants. After a complex procedural history, the D.C. Circuit vacated the repeal of the Clean Power Plan, vacated the ACE Rule, and sent the issue back to the EPA. Today, in a 6-3 decision authored by Chief Justice Roberts, the Supreme Court reversed. After concluding that the petitioners had standing, the Court invoked what is known as the "major questions doctrine" and ultimately held that Congress did not grant the EPA in Section 111(d) of the Clean Air Act the authority to devise emissions caps based on the generation shifting approach the EPA took in the Clean Power Plan. Justice Gorsuch filed a concurring opinion (joined by Justice Alito), offering "additional observations" about the major questions doctrine. Justice Kagan filed a dissenting opinion, in which Justices Breyer and Sotomayor joined.

View the Court's [decision](#).

Biden v. Texas, No. 21-954: This case concerns the Migrant Protection Protocols (MPP)—also known as the "Remain in Mexico" policy—a former policy of the Department of Homeland Security (DHS) under which certain noncitizens arriving at the southwest border were returned to Mexico during their immigration proceedings. On June 1, 2021, the Secretary of Homeland Security terminated MPP. The District Court vacated the

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Secretary's termination and entered a permanent injunction requiring DHS to reinstate MPP. Then, in October 2021, the Secretary issued new memoranda terminating MPP, but the Court of Appeals affirmed the District Court's injunction. In a 5-4 decision authored by Chief Justice Roberts, the Supreme Court reversed. The Court held that the Government's rescission of MPP did not violate the Immigration and Nationality Act, and the Government's October 2021 memoranda constituted valid final agency action. Justice Kavanaugh filed a concurring opinion. Justice Alito filed a dissenting opinion (joined by Justices Thomas and Gorsuch). Justice Barrett filed a dissenting opinion, in which Justices Thomas, Alito, and Gorsuch joined as to all but the first sentence that reads: "I agree with the Court's analysis of the merits—but not with its decision to reach them."

View the Court's [decision](#).

In addition to these two decisions, the U.S. Supreme Court also granted certiorari in three cases:

Percoco v. United States, No. 21-1158: This case is an appeal by former Governor Andrew Cuomo's campaign manager who was convicted of honest-services fraud for accepting \$35,000 to help a developer navigate State bureaucracy. It presents the following question: does a private citizen who holds no elected office or government employment, but has informal political or other influence over governmental decisionmaking, owe a fiduciary duty to the general public such that he can be convicted of honest-services fraud?

Ciminelli v. United States, No. 21-1170: The federal wire fraud statute prohibits schemes to defraud or obtain money or property by means of false or fraudulent conduct through the use of interstate telecommunications channels like radio and television. See 18 U.S.C. § 1343. The Second Circuit has adopted the "right to control" theory of fraud, which treats the deprivation of complete and accurate information bearing on a person's economic decision as a species of property fraud under the federal wire fraud statute. The question presented is: whether the "right to control" theory of fraud states a valid basis for liability under the federal wire fraud statute?

Moore v. Harper, No. 21-1271: This case arises from the North Carolina Supreme Court's decisions invalidating proposed congressional maps applicable to federal elections in that State and to adopt a congressional map of its own creation. The question presented is: whether a State's judicial branch may nullify the regulations governing the "Manner of holding Elections for Senators and Representatives . . . prescribed . . . by the Legislature thereof," U.S. Const. art. I, § 4, cl. 1, and replace them with regulations of the state courts' own devising, based on state constitutional provisions purportedly vesting the state judiciary with power to prescribe whatever rules it deems appropriate to ensure a "fair" or "free" election?