

The Supreme Court Update - April 2, 2025

by Ian Blodger, Jessica M. Leano, and Brock Huebner

The Supreme Court of the United States issued two decisions today:

FDA v. Wages and White Lion Investments, L.L.C., No. 23-1038: This case concerns the validity of the FDA's denial of electronic cigarette manufacturers' applications to market their products. The Tobacco Control Act of 2009 grants the FDA broad jurisdiction to regulate tobacco products and prohibits a manufacturer from marketing any "new tobacco product" without FDA authorization. In 2016, the FDA determined that electronic cigarettes were a "new tobacco product" and required manufacturers to submit applications for authorization to sell their products. The FDA provided guidance on the types of information that it would consider in the applications, noting that it would review, among other things, the manufacturers' marketing plans. The FDA ultimately denied the applications, but did so without evaluating the applicants' marketing plans. The applicants sought judicial review of this denial under the Administrative Procedure Act and the Fifth Circuit, en banc, held that the FDA had acted arbitrarily and capriciously by applying application standards different from those the FDA had previously articulated, including by failing to review marketing plans. In a unanimous decision authored by Justice Alito, the Supreme Court vacated the Fifth Circuit's decision, holding that, other than declining to review the applicants' marketing plans, the FDA's decisions were consistent with its pre-decisional guidance. As to the FDA's decision not to consider the applicants' marketing plans, the Court considered the FDA's argument that this failure was harmless error. The Court clarified the standard for harmless error was broader than the standard applied by the Fifth Circuit, but declined to decide the exact standard, since that issue was not properly before the Court. With this clarification, the Court remanded to the Fifth Circuit for further review. Justice Sotomayor filed a short concurrence.

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

Medical Marijuana, Inc. v. Horn, No. 23-365: This case addresses a split among the Circuit Courts of Appeals on whether RICO, which creates a cause of action for "[a]ny person injured in his business or property," 18 U.S.C. § 1964(c), categorically bars

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recovery for business or property losses that derive from a personal injury. Horn purchased and tried a product described as “0% THC” from Medical Marijuana, and during a random drug screening, THC was detected in Horn’s system. Horn refused to complete a substance abuse program and was fired. Horn sued Medical Marijuana, alleging that Medical Marijuana was a RICO enterprise, and its false or misleading advertising satisfied the elements of crimes constituting a pattern of racketeering activity. The district court granted summary judgment for Medical Marijuana, finding that because a plaintiff cannot recover under RICO for a personal injury, a plaintiff could not recover for a business or property harm that results from a personal injury. The Second Circuit reversed, rejecting an “antecedent-personal-injury” bar that excludes recovery for all business and property injuries that happen to derive from a personal injury. In a 5-4 decision authored by Justice Barrett, the Supreme Court affirmed the Second Circuit, holding that the phrase “injured in his business or property” does not preclude recovery for all economic harms that result from personal injuries. The meaning of § 1964(c) is “straightforward,” and a plaintiff has been “injured in his business or property” if the plaintiff’s business or property has been harmed or damaged. By explicitly permitting recovery for harms to business and property, § 1964(c) implicitly excludes recovery for harm to one’s person. But the “business or property” requirement operates with respect to the *kinds* of harm for which a plaintiff can recover, not the cause of the harm. Thus, a plaintiff can seek civil RICO damages for business or property loss regardless of whether the loss resulted from a personal injury. Justice Jackson filed a concurring opinion. Justice Thomas filed a dissenting opinion. Justice Kavanaugh, joined by Chief Justice Roberts and Justice Alito, also filed a dissenting opinion.

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