

The Supreme Court Update - May 18, 2023

by Brock Huebner

Today, the Supreme Court of the United States issued six decisions:

Amgen Inc. v. Sanofi, No. 21-757: This case addressed the Patent Act’s “enablement” requirement—the provision that requires a patent applicant to describe the invention “in such full, clear, concise, and exact terms as to enable any person skilled in the art . . . to make and use the [invention].” 35 U.S.C. § 112(a). Amgen obtained patents covering antibodies engineered by scientists that help reduce levels of certain cholesterol. Amgen then sued Sanofi for infringement. In response, Sanofi argued the patents were invalid under the “enablement” requirement because the patents sought to claim for Amgen’s exclusive use potentially millions more antibodies than the company had taught scientists to make. The district court and Federal Circuit sided with Sanofi. Today, in a 9-0 decision authored by Justice Gorsuch, the Court held that the lower courts correctly determined that Amgen failed to satisfy the enablement requirement. The Court explained that a patent may call for “a reasonable amount of experimentation to make and use a patented invention,” but “in allowing that much tolerance, courts cannot detract from the basic statutory requirement that a patent’s specification describe the invention” so that a skilled person can make and use the invention.

View the Court’s [decision](#).

Andy Warhol Foundation for the Visual Arts v. Goldsmith, No. 21-869: This case concerned the scope of copyright law’s fair use doctrine. In 1981, professional photographer Lynn Goldsmith was commissioned by Newsweek to photograph the musician, Prince. Goldsmith later granted Vanity Fair a license to use the image “one time” only as a “reference for an illustration.” Vanity Fair hired Andy Warhol to create a purple silkscreen portrait based on Goldsmith’s photo. Warhol also used the photo to create 15 other images with different background colors. Warhol’s purple Prince image was published in a 1984 Vanity Fair issue, with Goldsmith credited and paid as the source photographer. After Prince died in 2016, Condé Nast, Vanity Fair’s parent company paid the Andy Warhol Foundation for the Visual Arts, Inc. (“AWF”) to license

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the orange version of Warhol's Prince image ("Orange Prince") and publish it on the cover of a magazine. Goldsmith claimed the AWF's licensing of Orange Prince infringed her copyright of the original photograph, while AWF maintained its use was protected under the fair use doctrine in federal copyright law, 17 U.S.C. § 107. After the district court sided with AWF, the Second Circuit reversed and held the four fair use factors in § 107 favored Goldsmith. Today, in a 7-2 decision authored by Justice Sotomayor, the Court affirmed and held that AWF's licensing of Orange Prince was not fair use. The Court focused on the first fair use factor, "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes," and determined that the purpose of AWF's 2016 licensing of Orange Prince to Condé Nast was substantially the same as the original use of Goldsmith's 1981 magazine photograph. Justice Kagan (joined by Chief Justice Roberts) filed a dissent arguing the majority's analysis failed to properly consider the "transformative" nature of the Warhol's Orange Prince.

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

Twitter v. Taamneh, No. 21-1496: This case considered the potential liability of social media companies under the Antiterrorism Act ("ATA"). After a 2017 ISIS attack in a Turkish nightclub killed 39 people, the families of one of the victims sued Facebook, Twitter, and Google (as the owner of YouTube) under the ATA. The victim's family alleged that the social media companies knowingly allowed, and profited from, ISIS and its supporters using the platforms and algorithms as recruiting, propaganda, and fundraising tools. Because ISIS is a designated Foreign Terrorist Organization, the family alleged the companies aided and abetted ISIS in violation of the ATA, 18 U.S.C. § 2333(d)(2). Today, in a 9-0 decision authored by Justice Thomas, the Court dismissed the lawsuit and held the family failed to state a claim under the ATA. While undefined in the ATA itself, the Court held that aiding and abetting liability under the ATA requires "conscious, voluntary, and culpable participation in another's wrongdoing" and that the companies' actions fell short of the standard with respect to the nightclub attack. Justice Jackson filed brief a concurring opinion.

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

Gonzalez v. Google, No. 21-1333: This case was related to *Twitter v. Taamneh* and addressed the extent of internet companies' protections under Section 230 of the Communications Decency Act ("Section 230"), 47 U.S.C. § 230(c)(1). Under Section 230, "No provider or user of an interactive computer service shall be treated as the publisher of or speaker of information provided by another information content provider." Today, in an unsigned per curiam opinion, the Court did not decide the scope of Section 230. Instead, because the plaintiff's Section 230 claims relied on the same factual allegations that were dismissed in *Taamneh*, the Court remanded to the Ninth Circuit for reconsideration in light of *Taamneh*.

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

Poliselli v. Internal Revenue Service, No. 21-1599: This case concerned the Internal

Revenue Service's ("IRS") power to seek financial records from third-party record keepers, without notification to the delinquent taxpayer. In this case, the IRS entered assessments against Remo Polselli for more than \$2 million in unpaid taxes and penalties, and then issued summonses to banks and law firms seeking financial records concerning Polselli, without notice to Polselli. Some of those third parties moved to quash the summonses, arguing notice to Polselli was required. The district court rejected that argument, as did the Sixth Circuit which concluded that the summonses fell within an exception to the general notice requirement. Today, in an opinion authored by Chief Justice Roberts, the Court affirmed. The Court rejected the argument that the exception to the notice requirement applies only if the delinquent taxpayer has a legal interest in the accounts or records summoned by the IRS. Justice Jackson issued a concurring opinion (joined by Justice Gorsuch) to emphasize that notice is the default rule when the IRS seeks information from third-party record keepers.

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

The Ohio Adjutant General's Department v. Federal Labor Relations Authority, No. 21-1454: This case involved whether the Federal Labor Relations Authority ("FLRA") properly exercised jurisdiction over an unfair labor practices dispute between the Ohio National Guard ("Guard") and the American Federation of Government Employees, Local 3970, AFL–CIO ("Union"), which represents federal employees known as dual-status technicians who work in both civilian and military roles for the Guard. Under the Federal Service Labor-Management Relations Statute, the FLRA only has jurisdiction over labor organizations and federal "agencies." The Guard claimed it was not a federal "agency." The lower courts concluded there was jurisdiction. Today, in a 7-2 decision authored by Justice Thomas, the Court held the FLRA has jurisdiction over the dispute because the Guard acts as a federal "agency" when they hire and supervise dual-status technicians serving in their civilian role. Justice Alito (joined by Justice Gorsuch) dissented.

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