

Presidential Transitions: A New Administration's Potential Impact on Pending Supreme Court Cases

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As a presidential administration changes, so too may the [litigating positions](#) taken by the United States in cases before the Supreme Court. Put differently, a “change in [executive] personnel may bring a [change](#) in [the executive’s] jurisprudential commitments.” These observations were provided by [Michael Dreeben](#), a former Deputy Solicitor General of the [Office of the Solicitor General](#) (OSG), which is a component of the Department of Justice that is [responsible](#) for “conduct[ing] all litigation on behalf of the United States and its agencies in the Supreme Court of the United States.” As Dreeben indicates, if a new presidential administration takes office while a case is pending before the Supreme Court, the new administration’s OSG may, but need not, adhere to the prior administration’s positions in that case.

This Sidebar examines shifts in OSG positions following the inauguration of a new President. It first offers examples of such changes from the past three presidential administrations—reflecting past practice and demonstrating the potential that a new presidential administration may assume a different course in a pending Supreme Court case. It then presents two tables, one identifying the universe of accepted cases in which the United States, represented by the OSG, is involved, and the other listing petitions in which the Supreme Court has invited OSG involvement. These tables thus capture the cases in which a new Solicitor General could announce a change in position that could then have a downstream effect on cases before the Court. The Sidebar concludes with considerations for Congress.

OSG Litigation Position Changes: Past Examples and Practical Impact

Changes in position by a new OSG are not uncommon and may have a meaningful impact on pending Supreme Court cases. To illustrate, the OSG has shifted at least some positions in each of the last three changes in presidential administrations. For example, a Solicitor General appointed by President Obama wrote in [Puerto Rico v. Sanchez Valle](#) that the arguments advanced by prior administrations regarding the dual sovereignty of Puerto Rico and the United States for purposes of the Double Jeopardy Clause “do not reflect the considered view of the [current] Executive Branch”; a Solicitor General appointed by President Trump disclosed in [Janus v. American Federation of State, County, and Municipal Employees, Council 31](#), that “the government reconsidered” the First Amendment question regarding public employees’

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payment of mandatory union fees before the Court and arrived at an “opposite conclusion” compared to earlier administrations; the OSG under President Biden “notif[ie]d the Court that the United States no longer adheres to the conclusions in the previously filed brief” in a case, [California v. Texas](#), concerning whether a provision of the Patient Protection and Affordable Care Act was unconstitutional. In light of this recent past practice, there is reason to suggest that a Solicitor General appointed by President Trump and confirmed by the Senate may likewise change positions in cases before the Court.

A change in OSG litigating position may matter in several respects. First, the OSG determines whether the United States will [seek Supreme Court review](#) of an adverse ruling to the Supreme Court. The OSG of a new administration may decide to not press a petition for a writ of certiorari with the Supreme Court. For example, in [EPA v. New Jersey](#), the OSG withdrew a petition for review because the new administration intended to comply with, rather than challenge, the Environmental Protection Agency (EPA) emission standards [regulation](#) that was at issue in the case. Second, if a party asks the Supreme Court to hear a case in which the United States prevailed before a lower court, the OSG may file, or be invited by the Court to file, a “[brief in opposition](#)” in which the OSG may argue that the case is not appropriate for Supreme Court review. If the OSG no longer opposes the petitioner’s argument, it may impact the Supreme Court’s treatment of the petition. For example, if the OSG no longer objects to certiorari, the Supreme Court may grant certiorari, vacate a lower court’s judgment, and send the case back to the lower court, such as when the Solicitor General in [Tapia-Acuna v. INS](#) changed course and agreed with the petitioner’s contention that he was entitled to immigration relief. Third, the Solicitor General, though not a primary party before the Court, may [decide to file](#), or be [invited by the Supreme Court to file](#), an amicus brief expressing the views of the United States on a pending petition or on a case that the Court has accepted. Such an amicus filing occurred, for example, in the Equal Protection case of [Charter Day School v. Peltier](#), when the Court ordered the OSG to file an amicus brief and the OSG responded by contending that the petition should be denied. Fourth, the OSG may alter its views at the merits stage of the Supreme Court proceedings. In [California v. Texas](#) referenced above, the OSG [informed](#) the Court of its change of position after the petition had been accepted and oral arguments had been heard.

The extent to which the OSG is involved in the Supreme Court docket, and thus the number of cases in which changes in OSG positions could have an impact, is significant. According to U.S. Circuit [Judge Patricia A. Millett](#), who was formerly an Assistant to the Solicitor General, the office “appear[s] in approximately [seventy to eighty percent](#) of the Supreme Court’s cases every Term.”

Pending Supreme Court Cases Involving the OSG

Table 1 contains the case name, Supreme Court docket number, the involvement of the United States (i.e., petitioner, respondent, amicus curiae), and the status of the case. The hyperlinks provided proceed to the question(s) presented. The cases are categorized by status as of this writing.

The provided list should not be construed to suggest or imply that the OSG will adopt a different position in any or all of these cases. It only enumerates those cases and petitions in which such a change theoretically could take place. In addition, as [Paul Clement](#), a former Solicitor General, [pointed out](#), the OSG will continue its existing work and corresponding positions until the inauguration. “Then on January 20th at noon,” he [added](#), “another President comes in from a different party with presumably different views.” As such, a new Solicitor General could litigate differently the cases and petitions flagged herein only after the new President and new Solicitor General assume their respective roles. Moreover, some of the identified cases could be decided prior to January 20, thus obviating the opportunity for the new OSG to depart from a previous position.

Table 1. Pending Cases Accepted by the Supreme Court and Involving the OSG

Case Name	Case Number	OSG Role	Status
Garland v. VanDerStok	No. 23-852	Petitioner	Argued
Lackey v. Stinnie	No. 23-621	Amicus curiae	Argued
Bouarfa v. Mayorkas	No. 23-583	Respondent	Argued
City and County of San Francisco v. EPA	No. 23-753	Respondent	Argued
Bufkin v. McDonough	No. 23-713	Respondent	Argued
Wisconsin Bell, Inc. v. United States, ex rel. Todd Heath	No. 23-1127	Amicus curiae	Argued
Advocate Christ Medical Center v. Becerra	No. 23-715	Respondent	Argued
E.M.D. Sales, Inc. v. Carrera	No. 23-217	Amicus curiae	Argued
Velazquez v. Garland	No. 23-929	Respondent	Argued
Delligatti v. U.S.	No. 23-825	Respondent	Argued
NVIDIA Corp. v. E. Ohman J:or Fonder AB	No. 23-970	Amicus curiae	Argued
FDA v. Wages and White Lion Investments, LLC	No. 23-1038	Petitioner	Argument Scheduled
U.S. v. Miller	No. 23-824	Petitioner	Argument Scheduled
Republic of Hungary v. Simon	No. 23-867	Amicus curiae	Argument Scheduled
U.S. v. Skrmetti	No. 23-477	Petitioner	Argument Scheduled
Kousisis v. U.S.	No. 23-909	Respondent	Argument Scheduled
Feliciano v. Department of Transportation	No. 23-861	Respondent	Argument Scheduled
Seven County Infrastructure Coalition v. Eagle County, Colorado	No. 23-975	Respondent	Argument Scheduled
Dewberry Group, Inc. v. Dewberry Engineers Inc.	No. 23-900	Amicus curiae	Argument Scheduled
Hewitt v. U.S.	No. 23-1002	Respondent	Argument Scheduled
Stanley v. City of Sanford, Florida	No. 23-997	Amicus curiae	Argument Scheduled
Thompson v. U.S.	No. 23-1095	Respondent	Argument Scheduled
Free Speech Coalition v. Paxton	No. 23-1122	Amicus curiae	Argument Scheduled
FDA v. R.J. Reynolds Vapor Co.	No. 23-1187	Petitioner	Argument Scheduled
Esteras v. U.S.	No. 23-7483	Respondent	Argument Scheduled
NRC v. Texas	No. 23-1300	Petitioner	Argument Scheduled
Oklahoma v. EPA	No. 23-1067	Respondent	Argument Not Scheduled
EPA v. Calumet Shreveport Refining, LLC	No. 23-1229	Petitioner	Argument Not Scheduled
Riley v. Garland	No. 23-1270	Respondent	Argument Not Scheduled

Source: Compiled by CRS.

Note: The information in this table is current as of the date of this product.

Table 2 contains the case name, Supreme Court docket number, as well as the involvement of the United States (i.e., petitioner, amicus curiae). The hyperlinks provided proceed to the question(s) presented. In each case below, the petition is pending a Supreme Court decision whether to hear the case. Because of the volume of petitions filed by parties against the United States (the Court received more than [4,000 petitions](#) in the 2022 term), this list includes only those petitions filed by the OSG in the current October 2024 term and in which the Court has called for the views of the Solicitor General (CVSG).

Table 2. Select Pending Petitions Before the Supreme Court and Involving the OSG

Case Name	Case Number	OSG Role	Status
FDA v. SWT Global Supply, Inc.	No. 24-474	Petitioner	Pending
Commissioner of Internal Revenue v. Jennifer Zuch	No. 24-416	Petitioner	Pending
Department of Education v. Career Colleges and Schools of Texas	No. 24-413	Petitioner	Pending
Mulready v. Pharmaceutical Care Management Association	No. 23-1213	CVSG	Pending
M & K Employee Solutions, LLC v. Trustees of the IAM Pension Fund	No. 23-1209	CVSG	Pending
Landor v. Louisiana Department of Corrections and Public Safety	No. 23-1197	CVSG	Pending
Walen v. Burgum	No. 23-969	CVSG	Pending

Case Name	Case Number	OSG Role	Status
Shell PLC v. City and County of Honolulu, Hawaii	No. 23-952	CVSG	Pending
Sunoco LP v. City and County of Honolulu, Hawaii	No. 23-947	CVSG	Pending
Zilka v. City of Philadelphia Tax Review Board	No. 23-914	CVSG	Pending
Cox Communications, Inc., v. Sony Music Entertainment	No. 24-171	CVSG	Pending
Sony Music Entertainment v. Cox Communications	No. 24-181	CVSG	Pending

Source: Compiled by CRS.

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In addition, the Supreme Court has called for the views of the Solicitor General in a case in which several states are seeking to invoke the original jurisdiction of the Court: [Alabama v. California](#), No. 22O158 (amicus curiae).

Table Methodology

CRS compiled **Table 1** and **Table 2** using the parameters and limitations outlined here. Different research methodologies may yield different results. The entries were compiled through reviews of several sources, primarily the orders, calendars, and dockets from the website of the Supreme Court of the United States, as well as the list of cases, petitions, and articles and [lists](#) on SCOTUSblog.com.

Considerations for Congress

Congress may monitor these cases and petitions for any shifts in position from the new administration. To the extent that Congress may agree or disagree with an existing or eventual position taken by the Executive, Members of Congress may consider filing an [amicus brief](#) in the relevant case to offer their perspective and aid in the decisional process of the Supreme Court, assuming that such a brief may be submitted in accordance with any applicable deadline. Congress also may monitor the opinions released by the Court in these and other cases, and may consider whether to address the rulings by way of legislation or hearings.

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