

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. The years 2021, 2022, 2023, 2024, and 2025 are overlaid on the hand, with 2024 being the largest and most prominent. The background is a blurred outdoor scene with trees and a bright sky.

BUSINESS IN 2024

WEEKLY WEBINAR SERIES

 **BOND** **SCHOENECK**
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Your Host



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TODAY'S AGENDA

Gabe Oberfield – (12:00PM-12:10PM)

- Agenda
- SCOTUS Roundup

Brad Hoppe – (12:10PM-12:20PM)

- Limited Injunction of FTC Non-Compete Ban

Tom Bezigian – (12:20PM-12:30PM)

- What's New in the World of Estate Tax

Rob Patterson – (12:30PM-12:40PM)

- Using ESOPs in Succession Planning

G. Oberfield – (12:40PM-12:45PM)

- Questions / Wrap Up

SCOTUS Round Up

- Topics addressed among key decisions (and voting tallies):
 - Immunity for Former Presidents 6-3
 - Rights of Social Media Platforms 9-0
 - Jan. 6 Obstruction Charges 6-3
 - Power of Federal Agencies 6-3
 - Restrictions on the Homeless 6-3
 - Emergency Abortion Care – Dismissed
 - Opioids Settlement 5-4
 - Cross-State Air Pollution 5-4
 - Administrative Courts 6-3
 - Gun Rights 8-1
 - Bump Stocks for Guns 6-3
 - Abortion Pills by Telemedicine 9-0
 - N.R.A. and the First Amendment 9-0



(Listing courtesy of the New York Times)

Key Decisions

- Immunity for Former Presidents 6-3
 - *New doctrine – Presidents’ private conduct vs. ‘official acts’*
- Rights of Social Media Platforms 9-0
 - *Cases Returned to lower courts concerning power of social media companies to curb content*
- Jan. 6 Obstruction Charges 6-3
 - *Certain charges filed against alleged Jan 6. participants deemed inapplicable to circumstances*
- Power of Federal Agencies 6-3
 - *Overturms Chevron*
- Restrictions on the Homeless 6-3
 - *Jurisdictions can limit where unhoused individuals set up camps*
- Emergency Abortion Care – Dismissed
 - *FDA protocols upheld*



Key Decisions, Continued

- Opioids Settlement 5-4
 - *Provisions of Sackler settlement on opioid deaths unwind*
- Cross-State Air Pollution 5-4
 - *Limits liability for cross-jurisdictional air pollution*
- Administrative Courts 6-3
 - *Limits power of administrative courts to fine / punish*
- Gun Rights 8-1
 - *Second amendment not violated when certain DV convictions preclude gun ownership*
- Bump Stocks for Guns 6-3
 - *Court upholds adaptations to guns that can automate them*
- Abortion Pills 9-0
 - *Standing cited as issue to challenge telemedicine use of certain abortion medication*
- N.R.A. and the First Amendment 9-0
 - *Lawsuit allowable for company following negative comments of public official*



'Chevron Deference' Overturned

As Nick Jacobson addressed last week:

- Through companion cases, SCOTUS overturned *Chevron v. Natural Resources Defense Council*
 - Chevron doctrine:
 - Applied where a statute was silent or ambiguous on a specific issue
 - Required courts to **defer to an implementing agency's interpretation so long as it was permissible under the statute**, even if a court interpreted the statute differently
 - New Holding:
 - Now, courts **must not give deference in situations of ambiguity**
 - Agencies still entitled to make policy decisions where they have been granted that authority
- Implications:
 - Challenges in numerous corners of agency law. For instance...
 - The 5th Circuit fielding a challenge to a Biden administration rule allowing socially conscious investing by employee retirement plans

'Chevron Deference' Overturned

- Other challenges mounting concerning agency payment schedules
 - Sen. Bill Cassidy (R-LA) wrote to HHS Secretary Xavier Becerra:
 - “This decision is an opportunity for executive agencies to re-examine their role relative to Congress, and to return legislating to the people’s elected representatives,” Cassidy wrote in a letter dated June 30 (as reported in McKnight’s).
 - “Despite the Court’s decision, given your agency’s track record, I am concerned about whether and how the Department of Health and Human Services will adapt to and faithfully implement both the letter and spirit of this decision.”
 - Cassidy asked Becerra and team to reexamine 10 key areas

Securities and Exchange Commission v. Jarkesy

Broadly diminishes power of agency courts / tribunals

- Facts:
 - S.E.C. brought a civil enforcement proceeding against Jarkesy
 - Before an administrative law judge employed by the agency
 - ALJ ruled against Mr. Jarkesy.
 - After an internal appeal, the agency:
 - ordered Jarkesy and his company to “1) pay a civil penalty of \$300,000 and 2) to disgorge \$685,000 in what it said were illicit gains.”
- Implications in Federal agencies
 - Reach into State law will be hotly litigated
 - Will have implications for all manner of agency decision-making vs. right to judicial-branch trial and remedy
 - Just fines? More far-reaching?

Limited Injunction of FTC Non-Compete Ban



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What's New in the World of Estate Tax



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Using ESOPs in Succession Planning



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Using ESOPs in Succession Planning

Founder of a private company wishes to cash out and (perhaps)

- Wd prefer company to be managed by persons they select, or
- No ready purchaser for the business
- Strategic or private equity buyer
 - Normally would select the continuing managers
 - Purchase price could be deferred or an earnout
- Taxes on the sale
 - Stock sale – 20% cap. gain tax + 3.8% net inv. income tax
 - Asset sale – min. 20%; some assets taxed at ord. income rates

Using ESOPs in Succession Planning (continued)

How an ESOP might work

- The company borrows funds from a bank and re-lends the funds to the ESOP
 - Term loan generally repayable over 5 – 20 years
- The ESOP purchases the shares from the owner for cash
- ESOP “repays” the loan with annual contributions by the company
 - As loan is repaid, shares are released to participants
- Variation: The former owner sells shares for the note

Using ESOPs in Succession Planning (continued)

Possible Difficulties and Challenges

- The company's cash flow must be sufficient to service the loan
- S corporations subject to special requirements
- Must establish the plan and trust and arrange for 3rd party administrator or record-keeper
- Company must get an independent valuation of the shares
 - Plan cannot pay more than fair market value
 - Shares must also be valued for all future transactions
- ERISA fiduciary duties apply to all share transactions

Using ESOPs in Succession Planning (continued)

Tax Benefits

- If the ESOP purchases at least 30% of the shares, the owner can defer tax on 100% of the gain
 - “Sec. 1042 rollover” of proceeds to “qualified replacement property” (shares of operating companies)
 - Not available for S corp. shares
- ESOP contributions are deductible (up to 25% of payroll)
 - In effect, company can deduct principal payments on the loan
- Dividends allocated to ESOP shares are also deductible

Using ESOPs in Succession Planning (continued)

Non-Tax Benefits

- ESOP can create a market for the owner's shares
- Company's Board could continue in place
 - ESOP participants have limited voting rights
- Employee ownership can (some believe) incentivize employees
- ESOP can permit (indirect) ownership of equity of some professional entities by non-licensees
 - Design professional corporations in NY State can now be 100% owned by an ESOP

Your Questions



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SCOTUS Roundup

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New York Employment Law: The Essential Guide

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

Thank You

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