



## Obama Is Already Having A Horrible Year In Front Of The Supreme Court

**Brett LoGiurato** | Jun. 25, 2012, 9:44 AM

As everyone awaits [the Supreme Court's ruling on the Affordable Care Act](#), the high court has already provided some clues as to how it views the Obama administration's increased claims of federal power.

Hint: This year hasn't been kind to **President Barack Obama** and his administration on the court. Ilya Shapiro, a senior fellow in constitutional studies at the libertarian Cato Institute, said it's a symbol of the Obama administration's faulty view of federal power.

"It's a breathtaking assertion of federal power," Shapiro told [Business Insider](#) of three cases [he highlighted recently in a Wall Street Journal op-ed](#). These Supreme Court decisions highlight a year in which the federal government has mostly struck out in its Supreme Court fights. Here are the highlights:

### 1. *Hosanna-Tabor Church v. Equal Employment Opportunity Commission*

In a unanimous 9-0 ruling, the Supreme Court determined that churches and other religious groups should be able to choose leaders without government meddling. Hosanna-Tabor Church had fired an employee for threatening to sue the church over an unrelated employment matter.

The U.S. [Equal Employment Opportunity Commission](#) sued on behalf of the teacher, who had been diagnosed with narcolepsy but cleared to work by doctors. But writing for the unanimous majority, Chief Justice [John Roberts](#) said that the "authority to select and control who will minister to the faithful is the church's alone." [The New York Times](#) wrote that the decision "was surprising in both its sweep and its unanimity."

### 2. *United States v. Jones*

The government asserted authority to attach a GPS device to the car of a suspected drug dealer — Antoine Jones. Police tracked the movement of the GPS device, without Jones' knowledge, for 28 days in 2004. The FBI arrested Jones in 2005, and he was found guilty in 2008 and sentenced to life in prison. Upon appeal that reached the Supreme Court, the justices unanimously agreed that it was unconstitutional.

The public agrees. According to a Fairleigh Dickinson poll on the subject, [73 percent of those surveyed](#) said police must have a warrant to put a GPS tracking device on a suspect's car/

"Nevertheless, the Justice Department was back in a lower court," Shapiro wrote, "using technicalities in *Jones* to claim again (*United States v. Pineda-Moreno*) that it could attach GPS devices without seeking warrants."

### 3. *Sackett v. Environmental Protection Agency*

This one was a little strange to begin with: The EPA issued a compliance order to a couple that had purchased a half-acre in Idaho on which they planned to build a house. The EPA's gripe: They were building on EPA-protected wetlands under the Clean Water Act.

The couple attempted, unsuccessfully, to get a hearing with the EPA. In another unanimous decision, the Supreme Court ruled that landowners have a right to immediate judicial review under the Administrative Procedure Act. In a statement after the ruling, Mike Sackett, one of the landowners, bashed the federal government. "The EPA used bullying and threats of terrifying fines, and has made our life hell for the past five years." The Supreme Court, he said, had come to his rescue.

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**Overall, based on raw data Shapiro supplied to Business Insider**, the federal government has won only five of the 15 cases in which it's been involved this term. That data can't be taken at face value — Shapiro said there are some cases, like the three he highlighted, that show a more indicative trend of the federal government's overreach.

Then there are the rulings on Obamacare and the Arizona immigration law (SB 1070), which are expected to come this week. On both, justices expressed skepticism toward the federal government's arguments. In the Arizona immigration law oral arguments, for example, even [liberal-leaning justice Sonia Sotomayor](#) was [unsympathetic to Solicitor General Donald Verrilli's](#) argument.

**"If the government loses in the health-care or immigration cases, it won't be because its lawyers had a bad day in court or because the justices ruled based on their political preferences," Shapiro wrote. "It will be because the Obama administration continues to make legal arguments that don't pass the smell test."**