



The previews are contributed by the Legal Information Institute, a nonprofit activity of Cornell Law School. The previews include an in-depth look at two cases, plus executive summaries of other cases before the Supreme Court. The executive summaries include a link to the full text of the preview.

Hawkins v. Community Bank of Raymore (14-520)

Court below: U.S. Court of Appeals for the Eighth Circuit

Oral argument: Oct. 5, 2015

Issues

1. Do loan guarantors have the same rights and protections that their applicant spouses are given by the Equal Credit Opportunity Act (ECOA)?
2. Does the Federal Reserve Board have the authority to define guarantors as applicants for purposes of the ECOA?

Questions as Framed for the Court by the Parties

1. Are “primarily and unconditionally liable” spousal guarantors unambiguously excluded from being ECOA applicants because they are not integrally part of “any aspect of a credit transaction”?
2. Does the Fed have authority under ECOA to include by regulation spousal guarantors as “applicants” to further the purposes of eliminating discrimination against married women?

Facts

This case begins with a loan dispute between Valerie Hawkins and Janice Patterson as guarantors, and the Community Bank of Raymore as creditor. Hawkins’ and Patterson’s husbands are the only two members of PHC Development, LLC, a Missouri limited liability company. Between 2005 and 2008, Raymore made four loans to PHC totaling more than \$2 million. Hawkins, Patterson, and their husbands, in connection with each loan, executed personal guarantees in favor

of Raymore. In 2012, when PHC failed to make payments due, Raymore declared the loans in default and demanded payment in full from PHC and Hawkins and Patterson as guarantors.

Hawkins and Patterson then filed suit against Raymore in the Federal District Court for the Western District of Missouri, seeking damages and an order declaring that their guarantees were void and unenforceable. In their complaint, they alleged that Raymore, in violation of the ECOA, had required them to sign the guarantees solely because of their status as spouses of their husbands. Raymore filed counterclaims, including claims for breach of the guarantees.

The Missouri District Court granted summary judgment in favor of Raymore on petitioners’ ECOA claim and on Raymore’s breach of guarantee counterclaims. In doing so, the court found that Hawkins and Patterson were not “applicants” as defined by the ECOA and thus that Raymore was not prohibited from requiring them to sign the guarantees. In 2014, they appealed the summary judgment to the Eighth Circuit.

On appeal, petitioners argued that the Missouri District Court should have deferred to the Federal Reserve Board’s Regulation B, which expands the ECOA “applicant” definition to include guarantors. The Eighth Circuit, in determining whether to defer to the Fed’s definition of “applicant,” applied the Supreme Court’s two step analysis known as *Chevron* deference. Under *Chevron*, courts defer to agency interpretations of federal statutes when the statute is ambiguous and the agency interpretation is not unreasonable. Using the *Chevron* framework, the appeals court ruled that the meaning of “applicant” as used in ECOA was not ambiguous. The Eighth Circuit thus declined to

defer to Regulation B’s expanded definition of “applicant” and affirmed the Missouri District Court’s grant of summary judgment in favor of Raymore. Hawkins and Patterson subsequently petitioned the Supreme Court for a writ of certiorari.

Discussion

This case presents the Supreme Court with an opportunity to decide whether ECOA’s plain language protects applicants but not guarantors and whether the Fed, in promulgating Regulation B, permissibly interpreted that definition to include guarantors. Petitioners maintain that ECOA does not explicitly exclude guarantors and argue that Regulation B permissibly clarified any ambiguity. Raymore counters that ECOA protections explicitly extend only to applicants and that any attempt to expand ECOA’s “applicant” definition to include guarantors is impermissible. The Supreme Court’s decision in this case may affect the amount of ECOA litigation, increase the cost of borrowing, and change the underwriting standards and costs for loans to female business owners.

Loan Liability and Cost of Borrowing

The United States argues that extending applicants’ protections under ECOA to guarantors does not “unduly expand” lender liability. It asserts that even if guarantors are treated as applicants under ECOA, courts do not always allow guarantors to raise defenses under ECOA. Moreover, the government notes that “*excluding* guarantors from the definition of ‘applicant’ would not necessarily prevent the invalidation of a [guarantee] obtained in violation of the Additional Parties Rule.”

Several bankers’ associations, as Raymore’s amici, argue that expanding the “applicant” definition to include spousal guarantors could expose lenders to added risk of litigation. As a result, they argue, lenders may shy away from extending loans to married business owners because of the risk a spousal guarantor may later sue the lender for discrimination under ECOA. Or, lenders may forgo a spousal guaranty but pass the risk of the unguaranteed loan onto

the borrower. Hence, the bankers' associations argue that the expanded definition would make it more difficult for married business owners to obtain loans. The associations also contend that Congress could not have intended that result, as its goal was to "to protect women who 'applied' 'directly' for credit," and that giving spousal guarantors the right to sue for discrimination under ECOA would not further Congress' intent.

Loans and Female Small Business Owners

The United States argues that if guarantors are not considered applicants under ECOA, married women could be financially ruined by their spouses' failed businesses and thus unable to obtain loans themselves. According to the government, ECOA's purpose was to protect married individuals' credit and access to financing from a spouse's business failures, and that failure to protect spousal guarantors undermines that intent. Petitioners also warn that limiting ECOA's protections to only applicants renders ECOA meaningless, enabling lenders to discriminate based on race, gender, marital status, age, or religion, so long as such discrimination is not directed toward the actual borrower. The United States adds that the Fed was granted broad authority to enact regulations to prevent just such an outcome, authority under which it promulgated Regulation B.

The bankers' associations argue that lenders often use spousal guarantors not for any discriminatory purpose, but because marital assets may be the only assets available to the applicant that can serve as collateral for the prospective loan. The associations contend that permitting spousal guarantors to challenge the validity of their guarantees under ECOA will likely result in married small business owners' inability to obtain commercial loans. The associations argue that a ruling in favor of Raymore would not encourage discriminatory lending practices but would simply prevent petitioners from asserting a cause of action that Congress intended only for applicants.

Analysis

In this case, the Supreme Court will decide (1) whether spousal guarantors have statutory standing to sue as applicants under ECOA and (2) whether the Fed had authority to clarify the "applicant" definition in ECOA. Hawkins and Patterson argue that ECOA's purpose and context indicates that

an "applicant" includes a "guarantor" and that Regulation B clarified the definition. Raymore counters that a plain reading of the statute excludes guarantors from the definition. It contends that the Fed's clarification of the meaning of "applicant" was not a permissible interpretation, because it was not consistent with ECOA's plain meaning or Congress's intention.

Is a Spousal Guarantor an "Applicant" Under ECOA?

Petitioners argue that Congress intended that "applicant" in ECOA includes spouses acting as guarantors, considering the statute's purpose. Because a narrow reading of "applicant" would allow for discrimination based on marital status, they contend such a reading would be inconsistent with the statutory scheme. Furthermore, they argue, ECOA defines "applicant" as any person who applies for credit, and defines "credit" as a right granted by a creditor to a "debtor" to defer payment of debt. Because spousal guarantors were debtors under a plain language interpretation, petitioners maintain that they fall within the broad scope of people who are "applicants." Lastly, they argue that spousal guarantors have alternative statutory standing as applicants because they fall within ECOA's protected "zone of interests," which includes the elimination of marital status discrimination in credit transactions.

Raymore counters that Congress defined "applicant" in ECOA as one who "applies" for credit "directly." The bank reasons this plain meaning does not include a "guarantor" and cautions that courts should not look for idiosyncratic meanings. It argues that the definition of application is unambiguous on its face and within the context of the statute and that judicial inquiry into statutory interpretation ends when the statute's language is unambiguous.

Did the Fed Have Authority to Interpret the Definition of "Applicant"?

Petitioners contend that Congress explicitly granted the Fed power to clarify through regulation any ambiguity in ECOA and that the Fed properly exercised this power in Regulation B. They explain that under *Chevron*, any ambiguity left by Congress in a statute for an agency to fill is an "an express delegation of authority" for the agency to clarify through regulation. Because Congress stated that one purpose of ECOA

is to eliminate marital status discrimination in the extension of credit, they argue, the Fed's interpretation that spousal guarantors are protected as ECOA "applicants" is both reasonable and within the agency's authority and discretion. Thus, Hawkins and Patterson conclude that the Court should defer to the Fed's rational interpretation, because it exercised congressionally granted authority to implement ECOA.

Raymore argues that under *Chevron*, courts should first look to a statute's plain meaning unless the statute's language is ambiguous. The bank asserts that ECOA's meaning of "applicant" clearly excludes guarantors and thus controls the Court's interpretation. Furthermore, Raymore contends that any agency interpretation of statutory language must be consistent with Congress's expressed intent, but the Fed's definition is not. The bank explains that the Fed acknowledged it was making a "substantive change" to the statutory definition of "applicant" in the 1985 amendment to Regulation B and not merely an administrative interpretation that would be entitled to *Chevron* deference. Even after the 1985 amendment, the bank maintains, the Fed continued to distinguish between a guarantor and an applicant in its interpretations.

Conclusion

The Supreme Court will consider (1) whether spousal guarantors can be considered "applicants" under ECOA and (2) whether the Fed had authority under ECOA to clarify by regulation that guarantors are statutory "applicants." Petitioners assert that the contextual meaning of "applicant" in ECOA includes a guarantor and that the Fed clarified this definition when it amended Regulation B in 1985. However, Raymore contends that a plain reading of the statutory language is proper and indicates that the word "applicant" does not include a guarantor. Petitioners also argue that Congress gave the Fed power to interpret any ambiguous language in ECOA. Raymore responds that Fed attempted to redefine "applicant" in a way that was inconsistent with its plain meaning and thus exercised more power than Congress granted. The Supreme Court's ruling will affect the ability of married small business owners to obtain commercial loans and the costs and underwriting standards of such loans. ©
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Kansas v. Gleason (14-452) and Kansas v. Carr (14-449, 14-450)

Court below: Supreme Court of Kansas

Oral argument: Oct. 7, 2015

Issues

1. Must courts affirmatively instruct juries about the relevant burden of proof for mitigating circumstances in capital murder cases?

2. Is a joint capital sentencing proceeding of two brothers prejudicial to an extent requiring severance, and must a jury contemplating capital punishment be instructed that mitigating circumstances “need not be proven beyond a reasonable doubt?”

Questions as Framed for the Court by the Parties

1. Did the trial court’s decision not to sever the sentencing phase of the co-defendant brothers’ trial here—a decision that comports with the traditional approach preferring joinder in circumstances like this—violate an Eighth Amendment right to an “individualized sentencing” determination, and was it harmless in any event?

2. Can the Eighth Amendment require that a capital sentencing jury be affirmatively instructed that mitigating circumstances “need not be proven beyond a reasonable doubt,” as the Kansas Supreme Court held here, or instead is the Eighth Amendment satisfied by instructions that, in context, make clear that each juror must individually assess and weigh any mitigating circumstances?

Facts

In *Gleason*, Sidney Gleason, Damien Thompson, Ricky Galindo, Brittany Fulton, and Mikiala Martinez robbed Paul Elliott at knifepoint in his home on Feb. 12, 2004. On Feb. 20, Gleason and Thompson drove to Martinez’ home after discovering that police had interviewed Martinez and Fulton about the robbery. Once there, Gleason shot and killed Martinez’ boyfriend, Darren Wornkey. Gleason and Thompson then drove Martinez to a rural area, where Thompson shot and killed her. On Feb. 22, Gleason and Thompson were arrested for the robbery. Shortly thereafter, they were charged with the capital murders of Martinez and Wornkey and other crimes.

At trial, the jury found Gleason guilty of

capital murder for both deaths. During the penalty phase, Kansas sought to impose the death penalty, which required the jury to find unanimously, beyond a reasonable doubt, that aggravating circumstances existed and that their existence was not outweighed by any mitigating circumstances. The state alleged multiple aggravating circumstances, while Gleason presented multiple mitigating circumstances. The court instructed the jury that “[t]he determination of what are mitigating circumstances is for you as jurors to decide under the facts and circumstances of the case. Mitigating circumstances are to be determined by each individual juror when deciding whether the state has proved beyond a reasonable doubt that the death penalty should be imposed.” The jury unanimously sentenced Gleason to death, and the court approved the guilt and penalty verdicts.

On appeal, the Supreme Court of Kansas affirmed the conviction but reversed Gleason’s sentencing and remanded it to the district court, holding that the latter had failed to properly instruct the jury that the existence of mitigating circumstances did not need to be proven beyond a reasonable doubt. The high court found that the jury instruction violated the Eighth Amendment, because there was a reasonable likelihood that the jury gave the instruction in a way that prevented the jurors from considering relevant mitigating evidence.

In the *Carr* cases, brothers Jonathan and Reginald Carr were found guilty of several violent crimes, including capital murder that occurred in December 2000 in Kansas. After committing other crimes in the preceding days, the Carrs invaded a home that had three male and two female occupants. The Carrs proceeded to rape the women and forced the occupants to perform various sexual acts with each other. Later, they murdered all but one of the five occupants.

At trial, the Carrs were found guilty of four counts of capital murder arising from the home invasion. The court conducted combined penalty proceedings, as Kansas sought a death sentence for each brother. The Carrs moved to sever the penalty proceedings, but the motion was denied. Under Kansas law, a death sentence in capital cases requires the jury to find beyond a reasonable doubt the existence of aggravating circumstances and, if such circumstances exist, that no mitigating circumstances outweigh the aggravating circumstances. During the

proceedings, Kansas alleged four aggravating circumstances, while the Carrs claimed several mitigating factors, many of which involved their shared experiences. The court instructed the jurors to weigh all of the evidence and to make an independent determination for each brother but did not provide any instruction on the burden of proof for mitigating circumstances.

On appeal, the Kansas Supreme Court reversed three of the four capital convictions. Although the court affirmed one capital conviction, it found that the lower court erred in failing to sever the penalty hearings, because prejudice could not be avoided. The court therefore ordered a new penalty phase hearing only on the remaining capital murder charge. The court also found that the lower court had erred in failing to instruct the jurors that the mitigating circumstances did not need to be proven beyond a reasonable doubt.

Discussion

In these cases, the Supreme Court will examine the scope of Eighth Amendment protections available to defendants in capital sentencing proceedings. Kansas argues that a joint sentencing proceeding between brothers is not prejudicial, that a court is not required to affirmatively instruct jurors that mitigating evidence need not be proven beyond a reasonable doubt, and that the juries in these cases properly considered the relevant mitigating evidence. The Carrs argue that the joint sentencing proceeding was prejudicial and therefore required severance. Both Gleason and the Carrs contend that the juries were not given sufficient instruction to properly consider or weigh mitigating circumstances against aggravating circumstances in determining each defendant’s sentence.

Severance of Joint Penalty Phase Proceedings

Kansas and its supporting amicus contend that although a joint trial should be severed if it is prejudicial to one party, the court did not err in failing to sever the penalty phase hearings for the Carrs because the hearings satisfied the usual reasons for holding joint proceedings and were not prejudicial toward either defendant. The United States also argues that joint trials can enhance jurors’ ability to make appropriate decisions, given that more information about the crimes are usually available in such trials. Additionally,

the United States argues that appropriately joining trials prevents inconsistent verdicts, that such trials should be pursued whenever the parties will not have their trial rights violated, and that joint trials often promote the fair and efficient administration of justice.

Conversely, the Promise of Justice Initiative (PJI), as amicus in support of the Carrs, asserts that “evolving standards of human decency” should lead the Court to require severance in this and similar cases. PJI contends that because defendants who commit criminal acts often have disadvantaged backgrounds or social and mental problems and therefore may be less culpable than other defendants, separate trials may be necessary to ensure that the appropriate weight is given to mitigating factors. PJI also asserts that joint trials encourage a verdict that, while consistent, is not based on the actual moral culpability of the individual defendants and that joint trials do not lead to fairer, more accurate outcomes.

Jury Instructions on Mitigating Circumstances

The Criminal Justice Legal Foundation et al. (collectively CJLF), in support of Kansas, asserts that the Court should adopt a new standard for evaluating jury instructions, specifically, a “reasonable likelihood” test, whereby the jury should be presumed to apply an ambiguous instruction “in accordance with common sense and a just result.” Accordingly, CJLF claims, an instruction that failed to specifically indicate the burden of mitigating circumstances would be presumed sufficient where the instruction met the law’s minimum requirements and did not contradict common sense.

The Carrs counter that the Court should adopt a formal requirement for jury instructions in capital penalty proceedings. Reginald argues that an instruction implying mitigating evidence needs to be proven beyond a reasonable doubt prevents a jury from giving the evidence meaningful effect and appropriately applying leniency. He asserts that such an implied instruction will diminish the usefulness of witness testimony from witnesses who have intimate relationships with defendants due to accusations of bias.

Analysis

In these cases, the Supreme Court will consider whether the Eighth Amendment requires severance in a joint capital sentencing proceeding where the co-defendants are brothers and whether courts must affirma-

tively instruct a capital sentencing jury that mitigating evidence does not need to be proven beyond a reasonable doubt. Kansas contends that the joint sentencing phase violated neither of the Carrs’ Eighth Amendment rights and that they did not meet the high standard of demonstrating that actual and substantial prejudice took place during the joint sentencing phase. Each Carr separately contends that the trial court’s decision to forgo severing the trial at the sentencing phase deprived him of a nonprejudicial, individualized determination of the appropriateness of capital punishment.

Additionally, the Court will determine whether the Eighth Amendment requires courts to affirmatively instruct a capital sentencing jury that mitigating evidence does not need to be proven beyond a reasonable doubt. Kansas denies that the Court’s Eighth Amendment jurisprudence requires an affirmative instruction regarding the burden of proof for mitigating circumstances and contends that the jury instructions were constitutional in these cases because the jurors were apprised that they were to consider all of the relevant mitigating circumstances. The Carrs and Gleason counter that the jury instructions failed to adequately convey that the traditional “beyond a reasonable doubt” standard did not apply to the juries’ consideration of mitigating evidence, which resulted in a reasonable likelihood that the juries misinterpreted the instructions.

Severance of Sentencing Phase in Multi-Defendant Capital Punishment Cases

In the *Carr* cases, Kansas argues that, contrary to the state supreme court’s ruling, the Eighth Amendment does not create a per se right to severance in order to accommodate a defendant’s right to individualized sentencing. Rather, Kansas claims that trial judges have the discretionary power to determine whether severance of the sentencing phase is appropriate. Moreover, Kansas maintains that the criminal justice system has a long-standing preference for the joinder of criminal trials due to tactical considerations, consistency of verdicts, and efficacy of evidence presentation, among other factors. Additionally, Kansas contends that a joint sentencing phase is generally proper unless a defendant can meet the extremely high standard of demonstrating compelling, specific, and actual prejudice by the jury during sentencing. Kansas maintains that neither Carr is capable of meeting such

a standard due to the overlapping nature of the behavioral, familial, and physical evidence presented. Furthermore, Kansas asserts that the trial court eliminated any potential prejudice to the Carrs by providing explicit instructions to consider the evidence presented for and against each defendant individually, and by providing the jury with separate verdict forms. Finally, Kansas claims that evidence presented against both Carrs overwhelmingly justifies the capital punishment convictions.

But Jonathan Carr contends that the standard for assessing severance in a capital sentencing phase should be one of a reasonable risk of prejudice to the defendant, due to the life or death consequences of the decision. However, Jonathan asserts that he is able to meet the higher standard of a serious risk of jury prejudice because the court included evidence regarding Reginald at the joint trial that would be inadmissible in separate trials. As a result of the joint sentencing phase, Jonathan argues that his defense was prejudicially compromised and the jury was incapable of considering his mitigating evidence.

Reginald also asserts that the joint sentencing phase created a substantial risk of skewing the jury’s weighing process, which he maintains resulted in an arbitrary imposition of the death penalty. Reginald argues that Jonathan’s presentation of mitigating evidence tended to make Reginald appear more culpable. Reginald contends that the jury was incapable of considering each brother individually because evidence that was mitigating for Jonathan was prejudicial to Reginald and was, therefore, biased in a manner that would not have occurred had sentencing been severed.

Affirmative Jury Instruction Regarding Standard of Proof for Mitigating Evidence

Kansas asserts that the Supreme Court’s interpretation of the Eighth Amendment did not require the capital sentencing juries to be affirmatively instructed that mitigating circumstances need not be proven beyond a reasonable doubt. Rather, Kansas argues that a capital sentencing jury need only be instructed to consider any mitigating evidence presented to fulfill the requirements of the Eighth Amendment. Kansas points to three factors outlined by the Supreme Court in *Boyde v. California* to determine whether a jury interpreted the instructions as preventing the consideration of mitigating

evidence: (1) the instructions' language; (2) the actual evidence presented; and (3) counsel's arguments. Based on these factors, Kansas argues that (1) the instructions did not impose any burden of a proof to prove mitigating evidence, (2) Kansas did not contest the presentation of the majority of the mitigating evidence, and (3) in closing statements, the counsel for each party in the *Carr* cases emphasized that the jury should consider mitigating evidence on an individual basis. Kansas concludes that it is unlikely that the juries in these cases incorrectly applied the instructions to prevent the consideration of mitigating evidence and, as a result, there was no constitutional error. Kansas agrees with the dissent in *Gleason*, which argued that a failure to affirmatively instruct the jury that mitigating evidence need not be proved beyond a reasonable doubt does not justify a reversal under the Court's Eighth Amendment jurisprudence.

Jonathan Carr disputes Kansas' assertion that there was no constitutional error with respect to the instructions presented to the brothers' jury. He emphasizes that the instructions failed to explicitly state that the mitigation evidence was not required to be held to the same "beyond a reasonable doubt" standard as Kansas' presentation of aggravating circumstances. As a result, Jonathan argues that the vague instructions created a reasonable likelihood that the jury applied a higher standard of proof than required for establishing the existence of mitigating evidence during the sentencing phase.

Reginald Carr further argues that the ambiguous jury instructions resulted in both brothers' having to prove their mitigating evidence beyond a reasonable doubt, which he contends contradicts the Eighth Amendment. He claims that instructions may not prohibit jurors from giving meaningful weight to any mitigating evidence that may favor a sentence of life over death. Reginald argues that the application of the beyond a reasonable doubt standard to mitigating evidence works such a prohibition and contradicts the standard's purpose, which is intended to be applied to aggravating circumstances in order to favor defendants. Reginald concludes that juror confusion may result in the potentially random application of capital punishment and would, therefore, be in direct violation of the Eighth Amendment.

Gleason asserts that the jury instructions for sentencing in his case failed to ade-

quately distinguish between the burden of proof required to establish the existence of aggravating and mitigating circumstances. He maintains that any barrier to the jury's accounting for mitigating circumstances in their decision making process is at odds with the Court's Eighth Amendment jurisprudence. In support, Gleason cites *Boyde v. California*, which he argues shows that the Court held that a "commonsense" view, rather than a "technical" parsing of language, is the proper perspective from which to determine whether a jury instruction likely prevented jurors from considering mitigating circumstances. Gleason asserts that *Boyde* focused on the jury instruction itself as the first item of inquiry, with the actual evidence presented by the parties and the arguments of counsel considered secondarily. He contends that the jurors did not consider all relevant mitigating circumstances because the reasonable doubt standard for establishing aggravating circumstances was mentioned, but the lack of burden of proof needed to establish mitigating circumstances was not.

Conclusion

The Supreme Court will consider whether the Eighth Amendment requires severance in a joint capital sentencing proceeding where the co-defendants are brothers, and whether juries should be affirmatively instructed that mitigating evidence need not be proven beyond a reasonable doubt. Kansas argues that the Carrs failed to meet the extremely high standard of demonstrating prejudice at their joint sentencing and that the juries for the Carrs and for Gleason were provided with sufficient instructions to give each defendant an individualized evaluation of the mitigating evidence presented for each. Conversely, the Carrs argue that the joint proceeding exposed them to a substantial risk of prejudice. Both the Carrs and Gleason contend that the jurors were likely confused as to the standard of proof they were to apply to the mitigating evidence presented. The Court's ruling will provide guidance on the applicable severance standards in multi-defendant capital sentencing proceedings as well as the thoroughness of jury instruction required in such cases. It will impact how states instruct juries in capital punishment cases, possibly affecting the degree to which prosecutors can directly call into question the evidence marshaled to support the mitigating circumstances presented by the defense. ☉

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OBB Personenverkehr AG v. Sachs (13-1067)

Court below: U.S. Court of Appeals for the Ninth Circuit
Oral argument: Oct. 5, 2015

The Foreign Sovereign Immunities Act (FSIA) limits the ability of U.S. citizens to bring causes of action against foreign states and their agents in U.S. courts. But the FSIA contains a commercial activity exception that allows a U.S. court to hear suits involving a foreign state when the action is "based upon" the state's commercial activity in the United States. In this case, the Supreme Court will consider how to define when an entity is an agent of a foreign state and the scope of the commercial activity exception's "based upon" requirement. OBB Personenverkehr AG, a state run Austrian passenger railway, argues that foreign states are "presumptively immune" from U.S. jurisdiction under the FSIA unless an exception applies. OBB contends that injured Americans like Carol Sachs cannot satisfy "the based upon" requirement for claims arising from harm incurred on foreign soil. Sachs argues that a sale of a ticket in the United States constitutes commercial activity and thus satisfies that requirement. In the alternative, OBB argues that the FSIA clearly defines who can be an "agent" of the state and that the Ninth Circuit erred in relying on common law agency principles to find that a third-party's ticket seller was an agent of OBB. Sachs counters that common law agency principles should apply notwithstanding the language of the FSIA. This case may affect the balance of international litigation and may result in a shift from the restrictive theory of sovereign immunity. This case may also result in changes to how agents of a foreign state engage in business with the United States over the Internet. www.law.cornell.edu/supct/cert/13-1067 ☉

Ocasio v. United States (14-361)

Court below: U.S. Court of Appeals for the Fourth Circuit
Oral argument: Oct. 6, 2015

Samuel Ocasio, a former officer of the Baltimore Police Department, was involved in a kickback scheme in which officers would

refer car accident victims to an unauthorized towing company in exchange for monetary compensation. Ocasio was charged with conspiracy to commit extortion under the Hobbs Act, 18 U.S.C. § 1951. In this case, the Supreme Court will address whether the conspirators have to agree to obtain property from someone outside the conspiracy. Ocasio claims that a defendant must conspire with someone to obtain property from another person outside the conspiracy. The United States counters that the conspirators in an extortion scheme need to agree only that the public official will obtain property from another person but that the other person may be one of the co-conspirators. The decision in this case will implicate the boundaries between state criminal law and federal law for extortion. The decision will also clarify the method of statutory interpretation applied when statutory language is ambiguous. www.law.cornell.edu/supct/cert/14-361 ☉

DirecTV Inc. v. Amy Imburgia et al. (14-462)

Court below: California Second District Court of Appeal
Oral argument: Oct. 6, 2015

The Supreme Court will decide whether an arbitration provision in a customer agreement purportedly governed by the Federal Arbitration Act (FAA) requires the application of state law preempted by, or independent from, the FAA. DirecTV argues that the parties intended to arbitrate all disputes, that state law is always subject to the preemptive force of federal law, and that in any event the FAA requires courts to resolve ambiguities in favor of arbitration. Imburgia counters that the FAA requires agreements to be interpreted according to their express terms and that courts should interpret the express reference to state law in the agreement as California state contract law, independent from the preemptive force of federal law. The Court's decision may affect the enforcement of arbitration agreements in other contexts, as well as impact the way in which state courts interpret arbitration agreements. www.law.cornell.edu/supct/cert/14-462 ☉

Montgomery v. Louisiana (14-280)

Court below: Louisiana Supreme Court
Oral argument: Oct. 13, 2015

This case presents the Supreme Court with an opportunity to determine whether *Miller*

v. Alabama's prohibition of mandatory sentencing schemes requiring juveniles to be sentenced to life in prison without parole applies retroactively to offenders seeking collateral review. Montgomery argues that *Miller* applies retroactively because it announces a new substantive rule altering the range of available sentencing options, and it establishes a substantive right to individualized sentencing for juveniles facing life without parole. However, Louisiana argues that *Miller* does not apply retroactively, because it proscribes a procedural, rather than a substantive, rule. The Court's decision will impact the treatment of juveniles in sentencing proceedings. www.law.cornell.edu/supct/cert/14-280 ☉

Hurst v. Florida (14-7505)

Court below: Florida Supreme Court
Oral argument: Oct. 13, 2015

The Supreme Court will consider whether Florida's death sentencing scheme is constitutional in light of *Ring v. Arizona*, 536 U.S. 584 (2002). Convicted murderer Timothy Lee Hurst argues that Florida's capital sentencing scheme is unconstitutional in light of *Ring*. Hurst contends that the jury's advisory verdict does not satisfy the requirements of *Ring* and violates the Constitution because it minimizes the jury's sense of responsibility and subverts the jury's deliberative function by assigning the fact finding role to the trial court judge. Florida argues that its sentencing framework is constitutional because it complies with the requirements of *Ring* and ensures that a judge's sole determination will not necessitate a sentence of death for a defendant. The Court's decision will determine the constitutionality of Florida's death sentencing scheme and may impact the individual cases of prisoners who have been sentenced to death in Florida. www.law.cornell.edu/supct/cert/14-7505 ☉

FERC v. Electric Power Supply Association (14-840, 14-841)

Court below: U.S. Court of Appeals for the D.C. Circuit
Oral argument: Oct. 14, 2015

The Federal Power Act (FPA) empowers the Federal Energy Regulatory Commission (FERC) to regulate the transmission and sale of electric power in interstate commerce. FERC issued Order 745 to incentivize retail customers to reduce electricity

consumption when economically efficient. Under the new order, the cost of incentive payments to retail customers to encourage reduced energy consumption is subsidized by entities participating in the wholesale electricity market. The Electric Power Supply Association, along with four energy industry associations, brought suit under the Administrative Procedure Act alleging that the FERC's Order 745 violates the FPA because it invades the states' exclusive jurisdiction to regulate the retail market. The Supreme Court will consider whether (1) the FPA extends authority to the FERC to create a methodology that wholesale-market operators must use to calculate the compensation payments in the demand response scheme and (2) whether the court of appeals erred in holding that Order 745 is arbitrary and capricious. The Court's resolution of this case will impact the regulatory balance in the energy sector between federal and state governments. www.law.cornell.edu/supct/cert/14-840#. ViaEedZ-9AI ☉

Campbell-Ewald Co. v. Gomez (14-857)

Court below: U.S. Court of Appeals for the Ninth Circuit
Oral argument: Oct. 14, 2015

This case presents two issues. First, the Supreme Court will determine whether a case is moot when a plaintiff receives an offer of complete relief for his claims, even if one of the plaintiff's claims was made on behalf of an uncertified class of litigants. Second, if the case is not moot, the Court will consider whether the doctrine of derivative sovereign immunity for government contractors is restricted to claims arising out of property damage caused by public works projects or is applicable in other cases. Government contractor Campbell-Ewald argues that an offer of complete relief renders the plaintiff's individual and class claims moot. But the plaintiff, Jose Gomez, contends that an unaccepted offer does not moot a claim. Additionally, Campbell-Ewald argues that it qualifies for derivative sovereign immunity. However, Gomez argues that only contractors working on public works projects are entitled to such immunity. This case may affect the viability of class action lawsuits and may define the scope of derivative sovereign immunity. www.law.cornell.edu/supct/cert/14-857. ☉