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.

Zubik v. Burwell et al. (14-1418)

Court below: *U.S. Court of Appeals for the Third Circuit*
Oral argument: March 23, 2016

Issues

1. Does the U.S. Department of Health and Human Services' self-certification requirement for objecting religious nonprofits under the Affordable Care Act (ACA) violate the rights of these nonprofits to freely exercise their religion?
2. Would the government satisfy the Court's test for overriding the Religious Freedom Restoration Act (RFRA) where it admits that its alternative scheme may not fulfill the regulatory objective of providing contraceptives at no cost to objecting employers?

Questions as Framed for the Court by the Parties

Does the government violate the Religious Freedom Restoration Act (RFRA) by forcing objecting religious nonprofit organizations to comply with the U.S. Department of Health & Human Services (HHS) contraceptive mandate under an alternative regulatory scheme that requires these organizations to act in violation of their sincerely held religious beliefs?

Can the government satisfy RFRA's demanding test for overriding sincerely held religious objections in circumstances where the government itself admits that overriding the religious objection may not fulfill its regulatory objective—namely, the provision of no-cost contraceptives to objectors' employees?

Facts

The ACA requires health insurers to cover preventive care and screenings for women at no cost, according to guidelines established by the HHS. The regulations recognize an exemption from coverage for contraception and abortion-inducing drugs for religious employers. For religious nonprofit organizations, the regulations provide for an accommodation in which objecting religious nonprofit organizations may opt out of the coverage by following a process of self-certification. Following the self-certification process, employees of these religious nonprofit organizations gain access to contraception without cost sharing through alternate mechanisms under the ACA.

Two separate groups of appellees, Geneva College and a coalition of Catholic dioceses and Catholic nonprofit organizations, challenged the ACA's contraception requirements and the accommodation for nonprofit organizations. They argued that the requirements posed a substantial burden on the exercise of their religion. The first appellee, Geneva College, is a nonprofit tertiary institution established by the Reformed Presbyterian Church of North America. The District Court of the Western District of Pennsylvania granted Geneva College's motion for a preliminary injunction regarding its student health plans and enjoined the government and the school's student health insurance broker from providing abortion-inducing drugs that are against the college's religious beliefs. In a second ruling, the district court further enjoined Geneva College's employee health insurance plan broker from providing abortion-inducing drugs to employees of the college, and it found that the self-certification process forced Geneva to facilitate access to religiously objectionable services.

The second group of appellees appears in *Zubik v. Burwell* and consists of a group of Catholic dioceses and their subsidiary religious nonprofit organizations. The District Court of the Western District of Pennsylvania granted a preliminary injunction in *Zubik*, which was later converted into a permanent injunction on Dec. 20, 2013. The district court concluded that the HHS's accommodation required the dioceses and nonprofits to provide documentation to facilitate what those groups believe to be an immoral purpose. Additionally, the district court held that the distinction between the exemption granted to the Catholic Church and the accommodation granted to the Church's religious nonprofits presented a substantial burden, as it had the effect of dividing the Church's activities from the place of worship.

The government, in both cases, argued that the district court's rulings were incorrect because the submission of the form required by the accommodation is not burdensome and mandates third-party insurers, not the religious nonprofits themselves, to provide contraception coverage. The Court of Appeals for the Third Circuit reversed the district court's order granting the injunctions in both cases because the appellees failed to show a likelihood of success on the merits of their RFRA claims. In the court's view, the HHS's accommodation requirements do not represent a substantial burden on the religious exercise of the objecting groups.

The various petitioners each filed a writ of certiorari; the Supreme Court granted cert in November 2015.

Discussion

The Supreme Court's decision in this case may redefine what constitutes a religious burden and establish the limits on the applicability of the ACA.

WHO DETERMINES WHAT CONSTITUTES SINCERELY HELD RELIGIOUS BELIEFS?

Fifty Catholic theologians and ethicists writing in support of the Catholic groups argue that complying with the ACA mandate would be a violation of Catholic moral theology and ethics. The Catholic theologians contend that compliance will render them complicit in the mandate and imply approval of the provision

of abortion-inducing drugs and contraceptive services. Over 200 members of Congress, in support of the Catholic groups, argue that the government's petition requires the Court to make a determination on what constitutes reasonable or sincere beliefs.

On the contrary, the American Humanist Association, in support of the government, argues that although RFRA allows greater freedom of religion, RFRA does not imply that religious theology should dictate public policy. It suggests that the creation of exceptions for religious exercise on issues of public policy will eventually result in the creation of a theocracy. Furthermore, 240 students, faculty, and staff at religiously affiliated universities, in support of the government, argue that most religiously affiliated schools have diverse student bodies and faculties that are not limited to a particular faith and do not necessarily share the school's doctrinal views on contraception. As such, the need for contraceptive coverage for women at these religiously affiliated universities may be considered as compelling as providing contraception to the general public.

DOES THE ACA INFRINGE ON WOMEN'S RIGHTS?

The Concerned Women for America, in support of the Catholic groups, argue that although claiming to act for the benefit of women, the ACA infringes on women's ability to freely exercise their religion because noncompliance with the mandate would result in steep penalties. The Concerned Women for America argue that many women who seek to protect the constitutional guarantee of free exercise of religion are burdened by the requirements of the ACA.

The American Humanist Association, on the other hand, argues that women have unique health care needs that include contraceptive services and that Congress amended the ACA to provide those much-needed services to women. The American Humanist Association further argues that because the government has a compelling interest to provide these preventive care services to women, public health concerns cannot be subordinated to religious interests. The American Civil Liberties Union (ACLU), in support of the government, argues that society and the courts have steadily moved toward dismantling the use of religious defenses to engender discrimination against women. The ACLU further contends that by ruling in favor of the Catholic groups, the Court would defeat the laws designed to transform the lives of women and ensure that women can participate equally in society.

WOULD A FURTHER EXCEPTION TO THE ACA FRUSTRATE GOVERNMENT POLICY OBJECTIVES?

Bart Stupak, a former congressman, and the Center for Constitutional Jurisprudence (the Center) argue that preventive care, as defined by federal law, does not include the provision of contraceptives and abortion-inducing drugs. The Center also contends that Congress has the authority to determine what constitutes a compelling interest and therefore, the HHS, by attempting to redefine what constitutes a compelling interest and the policy objectives of the government, exceeds its authority as an agency.

The American Humanist Association, in support of the government, counters that particularly for those laws that affect public health and general welfare, the government may not have any "least restrictive means" through which it can achieve its objectives without burdening the exercise of religion. The American Humanist Association further argues that according to the Court's precedents, the protection of public health is a more compelling interest than any other competing interest, including religious objections and, therefore, women's reproductive health should not be subject to religious influences.

Analysis

Petitioners, a consolidated group of Catholic nonprofits (Catholic groups), argue that the government's existing religious exception and alternative measures are a substantial burden on the exercise of their religion. Sylvia Burwell, HHS secretary, and the HHS (the government), counter that the exception respects the exercise of religion while serving the government's compelling interest by the least restrictive means available.

DOES THE GOVERNMENT'S REGULATORY SCHEME SUBSTANTIALLY BURDEN PETITIONERS' EXERCISE OF RELIGION?

The Catholic groups claim that the "exercise of religion," as described by RFRA and recognized by the Court, is construed broadly and includes a wide range of conduct. Specifically, the Catholic groups first argue that they exercise their religion by offering health insurance to their employees that does not cover abortion-inducing drugs, contraceptives, or sterilization. Secondly, the Catholic groups contend that they would exercise their religion by refusing to sign the "self-certification" or "notification" document that would allow the Catholic groups' health insurance companies to provide such coverage to the Catholic groups' employees in contradiction with their religious beliefs. The Catholic groups argue that the government substantially burdens both of these religious exercises by threatening the Catholic groups with severe penalties if they refuse to sign the documents or offer health insurance with access to abortion-inducing drugs, contraceptives, and sterilization.

The government argues that the Catholic groups' interpretation of "exercise of religion" under RFRA is incredibly broad and contradicts the objective limits that the Supreme Court has created. The government claims that the Catholic groups are not substantially burdened merely because the government spends its money or arranges its own affairs in ways the Catholic groups find objectionable. According to the government, granting the Catholic groups' broad interpretation will be dangerous because different religious groups could consider a wide range of governmental conduct to be deeply offensive. The government contends that a zone of autonomy for religious exercise does exist, but that a religious group cannot dictate the government's internal activities out of mere religious objections.

DOES THE GOVERNMENT'S REGULATORY SCHEME ALLOW FOR A PROPER ACCOMMODATION?

The Catholic groups argue that the government and the lower courts have mischaracterized the government's regulatory scheme as providing the Catholic groups with an accommodation in the form of an "opt-out." According to the Catholic groups, the government's accommodation would still force the Catholic groups to offer health plans that violate their religious beliefs because employees of these religious organizations would nonetheless receive health coverage that the organizations believe are objectionable through the Catholic groups' action of completing the self-certification process.

The government counters the Catholic groups' claims that these religious organizations have the right to feel morally responsible for the government's actions in providing

the Catholic groups' employees with access to abortion-inducing drugs, contraceptives, and sterilization; the government contends that the groups' feeling morally responsible is different from establishing a burden on their exercise of religion that is recognized under RFRA. The government asserts that the Catholic groups have the right to opt out of the contraceptive coverage through a formal process that allows the government to hold the sole responsibility of providing the coverage to the Catholic groups' employees. The government maintains that it will relieve the Catholic groups of any legal obligation; if they choose to opt out, the government would then exercise its own independent obligation to provide the coverage.

DOES THE GOVERNMENT HAVE A COMPELLING INTEREST IN PROVIDING CONTRACEPTIVE COVERAGE?

The Catholic groups assert that Congress did not mandate contraceptive coverage, instead drafting the ACA to require only "preventive care." The Catholic groups highlight the fact that the contraceptive mandate is the result of administrative rulemaking rather than policy judgments made by Congress. The Catholic groups argue that in the absence of a policy judgment made by Congress, a mere administrative decision requiring contraceptive coverage cannot override religious liberty afforded under RFRA. The Catholic groups argue that the government cannot claim that it has a compelling interest because the government already exempts "houses of worship" from providing contraceptive coverage. According to the Catholic groups, these "houses of worship" are indistinguishable from the Catholic groups, which are also composed of religious organizations. The Catholic groups further contend that the government's compelling interest argument is undermined by the fact that the government allows exemptions through "grandfathered" health plans. These "grandfather" exemptions allow more than 54 million people to maintain the health care coverage that they obtained prior to the enactment of the ACA.

The government argues that it has a compelling interest in ensuring that women receive full health coverage, including contraceptive coverage. According to the government, contraceptive coverage is an essential component of women's health care because contraceptive coverage enables women to avoid various health problems, such as those that arise from unintended pregnancies. The government contends that providing contraceptive coverage also furthers the government's compelling interest in ensuring that women have equal health coverage. According to the government, a health care package that fails to include contraceptive coverage would not give women access to the full range of health care services available. The government acknowledges that not every employer is currently required to provide contraceptive coverage; however, it claims that even with exemptions, it still has a compelling interest. The government asserts that it provides numerous tax exemptions, exemptions from Selective Service registration, and Title VII discrimination exemptions to employers with fewer than 15 employees, yet no one would suggest that raising tax revenue, raising an army, and combatting employment discrimination are not compelling interests. Lastly, the government counters the Catholic groups' arguments by pointing to the false assumption that individuals who were able to maintain their health insurance package through a grandfathering provision lack contraceptive coverage. The government maintains that contraceptive coverage had become standard practice for most private insurance packages and that 28 states had required it by law, so even those who kept their health insurance plans through the grandfathering provision may have contraceptive coverage.

IS FORCING PETITIONERS TO COMPLY WITH THE MANDATE THE LEAST RESTRICTIVE MEANS OF PROVIDING CONTRACEPTIVE COVERAGE?

The Catholic groups claim that the government could provide contraceptive coverage independent of the health plans offered through the Catholic groups' institutions. The Catholic groups contend that the mandate is one of the many different ways that the government can provide contraceptives to women, including offering women the opportunity to enroll in separate, contraceptive-only health plans through the ACA. The Catholic groups further argue that the government would have to adopt only minor adjustments to the massive ACA system in order to provide independent contraceptive coverage.

The government counters by stating that the compelling interest in securing full and equal health coverage for women requires contraceptive coverage without financial, administrative, or logistical burdens. The government argues that using a separate system to provide contraceptive coverage, as opposed to using the Catholic groups' insurers, will deter women from receiving full and equal health coverage. Moreover, the government asserts that providing independent contraceptive coverage would not be less restrictive because it would require new legislation and impose employers' religious beliefs on its female employees.

Conclusion

The Catholic groups argue that the mandate to provide contraceptive coverage prevents them from offering health coverage to their employees in a manner consistent with their faith. The Catholic groups further argue that the requirement has been imposed without proof that the mandated coverage cannot be achieved through alternative means. The government counters that the objections of these religious organizations are not a burden RFRA recognizes and will frustrate the government's compelling interest in protecting the health of all female employees. The Court's decision in this case will define the extent of the ACA's religious exemption and the limits of the First Amendment protections afforded under RFRA. Full text available at www.law.cornell.edu/supct/cert/14-1418. ⊙

Written by Maame Esi Austin and Krsna N. Avila. Edited by Alice Chung.

U.S. Army Corps of Engineers v. Hawkes Co. (15-290)

Court below: *U.S. Court of Appeals for the Eighth Circuit*
Oral argument: March 30, 2016

Issue

Under the Administrative Procedure Act, are jurisdictional determinations by the U.S. Army Corps of Engineers that property contains "waters of the United States" (as defined by the Clean Water Act) subject to immediate judicial review?

Question as Framed for the Court by the Parties

Does the U.S. Army Corps of Engineers' determination that the property at issue contains "waters of the United States" protected by the Clean Water Act, 33 U.S.C. 1362(7);

see 33 U.S.C. 1251 *et seq.*, constitute "final agency action for which there is no other adequate remedy in a court," 5 U.S.C. 704, and is therefore subject to judicial review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*?

Facts

Hawkes Co. Inc. is a mining company that excavates peat from wetland areas in Minnesota. Hawkes wanted to expand its operations to wetlands near its current operations. After purchasing an option on the new property, Hawkes met with the U.S. Army Corps of Engineers (the Corps) to request a Clean Water Act (CWA) permit to authorize the expansion. Under the CWA, the Corps can issue permits to "discharge dredged or fill materials into 'navigable waters.'" The Corps issued a jurisdictional determination (JD) that the property fell under its jurisdiction. The Corps' "preliminary determination" stated that an environmental assessment on the property would be required. But the Corps indicated that the CWA permit "would ultimately be refused." Hawkes challenged the preliminary determination and maintained that the property was not "navigable water." The Corps, through an administrative appeal process, issued a revised JD concluding that the property fell under its jurisdiction. The revised JD meant that Hawkes had no administrative methods to challenge the JD.

Hawkes filed suit in the U.S. District Court for the District of Minnesota seeking judicial review of the Corps' affirmative JD. Hawkes argued that the Corps misapplied its jurisdictional tests. The district court dismissed the suit, finding that the revised JD did not constitute a "final agency action" from which Hawkes could appeal.

The Administrative Procedure Act (APA) governs "the procedures and practices of administrative law," including how individuals can appeal agency decisions. The APA states that judicial review is available only after a "final agency action for which there is no other adequate remedy in a court." To determine if an action is final, courts apply a two-part test. First, the action must not be of "a tentative or interlocutory nature" (i.e., the action should embody the agency's full decision-making authority). Second, the action must be one "from which legal consequences will flow" or one "by which rights or obligations have been determined."

The district court concluded that the revised JD met the first part of the test since it represented a final agency action. But, the court maintained that the revised JD did not meet the second part of the test because it was not an action "by which 'rights or obligations have been determined'" or from which "legal consequences will flow." According to the court, Hawkes could still seek a permit regardless of the revised JD.

The U.S. Court of Appeals for the Eighth Circuit disagreed with the district court on the second point. Instead the Eighth Circuit held that the revised JD was a decision from which legal consequences or obligations flowed. The court reasoned that the environmental assessments required for a permit were "prohibitively expensive." Additionally, the Eighth Circuit maintained that the assessment was pointless because the Corps was going to refuse the permit. Thus, the Eighth Circuit concluded that legal consequences flowed from the revised JD.

The Corps petitioned the U.S. Supreme Court for writ of certiorari, which the Court granted on Dec. 11, 2015.

Discussion

Agencies and litigants are interested in the Court's decision here because it will affect the lengths to which agencies must go to defend their decisions in court.

THE ADMINISTRATIVE BURDENS OF JUDICIAL REVIEW

On the one hand, the Corps argues that a JD is a "salutatory administrative practice," which the Corps gives for the benefit of interested landowners. The Corps maintains that a landowners' disagreement with a JD does not warrant "immediate judicial review" because it is meant as guidance for dealing with the CWA. Immediate judicial review would significantly burden the Corps since the tens of thousands of JDs the Corps issues yearly already strain its resources. Additionally, the Corps argues that treating a JD as a "final agency action" would contravene courts' longstanding practice of encouraging agencies to help people understand statutes.

On the other hand, the American Farm Bureau (AFB) argues that immediate judicial review of JDs would not really burden the Corps. Even though the Corps issues many JDs every year, the AFB suggests that for easy cases, in which jurisdiction seems clear, parties will try to work with the Corps to reach a solution rather than to litigate. The AFB suggests that parties will only litigate cases in which the operations at stake are significant enough to warrant clearer JDs. Additionally, the Cause of Action Institute argues that requiring anything other than immediate judicial review raises due process concerns. Without immediate judicial review, landowners would be significantly hindered from profiting off their lands. Consequently, the Cause of Action Institute maintains that concerns over judicial efficiency do not outweigh the deprivation of landowners' rights.

Analysis

The APA allows federal courts to review a federal administrative agency's actions. As discussed, two conditions must be met. First, the action must be the "consummation" or final aspect of the agency's decision-making process. Second, the agency's action must be one that determines the reviewing party's rights or obligations, or the action must implicate legal obligations on the part of the reviewing party.

IS A JURISDICTIONAL DETERMINATION A FINAL AGENCY ACTION? IS THE JD JUST "GUIDANCE"?

The Corps argues that Hawkes' suit is not yet ripe because the Corps' revised JD was not a final agency action. Instead, the Corps claims that JDs are only guidance, that they are informational and merely assist landowners in assessing their rights, the value of their assets, and their obligations under the CWA. Property owners who do not receive JDs can proceed without licensure if they are confident that their land does not contain any waters regulated by the CWA. The Corps argues that providing JDs is an example of the "administrative practice of responding to inquiries from potentially regulated parties … concerning factual circumstances." The Corps maintains that JDs do not determine or impose legal obligations because they contain no directives.

However, Hawkes maintains that an undesirable JD effectively forces property owners to abandon the use of regulated land or to seek a potentially unnecessary permit at a great cost. Hawkes contends that the permit, which could cost up to $100,000, would be potentially unnecessary because, when reviewed by a court, it is possible the court will determine the CWA does not apply to their land. Hawkes claims that independent legal consequences are unnecessary because

the CWA imposes general obligations that are brought to bear on landowners through JDs. Hawkes claims that JDs contain all of the marks of legal consequences since JDs authorize enforcement of the CWA, increase landowners' potential liability by exposing them to the EPA's scrutiny, and require landowners to obtain a permit or face sanctions for using their land without one.

DOES THE REVISED JD AFFECT THE STANDARD FOR OBTAINING A PERMIT?

The Corps argues that an affirmative JD does not affect the standard of review for obtaining a permit, nor does it change a landowner's obligation to obtain a permit. This is because the CWA as a statute imposes legal obligations, not the JD. The Corps argues that having a practical effect on how landowners assess their obligations is insufficient legal effect to make it a final agency action.

But Hawkes contends that since JDs can be appealed within the Corps on "exactly the same basis as a formal permit," they constitute final agency decisions, like formal permit decisions. Furthermore, Hawkes asserts that JDs are similar to other types of agency actions that the Court has found to be final under the APA.

ARE THERE ALTERNATIVE OPPORTUNITIES FOR JUDICIAL RESOLUTION OF THE ISSUE OF CWA COVERAGE?

The Corps argues that even if JDs constitute final agency actions, there are other adequate judicial remedies available to landowners. The Corps claims that the permitting process is the primary avenue of judicial review of a jurisdictional determination. When the Corps denies or conditions a permit, parties are entitled to judicial review of that process. According to the Corps, the process is neither prohibitively expensive nor burdensome. The Corps claims a landowner can carry out a discharge, and if that landowner is then fined or sanctioned by the EPA or the Corps, the landowner is entitled to challenge that fine or sanction in federal court. Neither of these methods of reaching a court requires a JD.

Hawkes claims that there is no adequate remedy in court because the cost of seeking a permit prior to judicial review of a JD is very high. Doing so would be wasteful and unnecessary, especially if it is later determine that the landowner is not covered by the CWA. Accordingly, a landowner who successfully challenges a JD only after going through the permitting process would waste a great deal of money. Hawkes challenges the Corps' assertion that a landowner can obtain judicial review by challenging an enforcement mechanism. In that situation, the landowner cannot initiate the process and must wait to be sanctioned by either the Corps or the EPA. Furthermore, the risk of triggering an enforcement action is high because of the size of the penalties and the potential for prison time. Hawkes argues that this is why courts should review JDs.

Conclusion

This case will determine whether landowners who receive an affirmative JD can appeal that decision to a court before seeking a permit. The Corps argues that JDs are not final agency actions and impose no legal consequences; therefore, they should not be subject to immediate judicial review. Hawkes argues that JDs constitute final agency actions because they impose practical legal consequences, including the risk and costs incurred if a landowner waits to appeal an affirmative JD. The Court's decision will likely impact the frequency with which federal courts review claims seeking review of JDs. Full text available at www.law.cornell.edu/supct/cert/15-290. ☉

Written by Michael J. Levy and Reymond Yammine. Edited by Chris Milazzo.

Husky International Electronics Inc. v. Ritz (15-145)

Court below: *U.S. Court of Appeals for the Fifth Circuit*
Oral argument: March 1, 2016

The Supreme Court will decide whether "actual fraud" under 11 U.S.C. § 523(a)(2)(A) (§ 523(a)(2)(A)) of the Bankruptcy Code includes fraudulent transfers as an exemption to the discharge of debts owed to a creditor, or whether it requires that the creditor show a fraudulent misrepresentation. Husky International Electronics Inc., a component manufacturer, argues that a creditor has been shown actual fraud by a debtor if that debtor was knowingly involved in a fraudulent transfer of funds, regardless of whether the debtor made a misrepresentation to the creditor. Husky argues that, given the long-standing common law use of "actual fraud" to include any kind of intentional fraud, including fraudulent transfers, Congress intended to expand the scope of § 523(a)(2)(A) beyond mere misrepresentations. David Lee Ritz, owner of Chrysalis Manufacturing Corp. and one of Husky's customers, contends that the term "actual fraud" only adds a requirement of intention on behalf of the debtor. He maintains that Congress would have clearly stated that fraudulent transfers would bar a debtor's discharge if it had wanted to expand the Bankruptcy Code in that way. Instead, Ritz maintains that a creditor must show that the debtor intentionally made a fraudulent misrepresentation. The Court's decision could pose a concern to debtors who have made transfers of funds before filing for bankruptcy, and the decision may restrict creditors' remedies to recover debts. Full text available at www.law.cornell.edu/supct/cert/15-145. ☉

Nichols v. United States (15-5238)

Court below: *U.S. Court of Appeals for the Tenth Circuit*
Oral argument: March 1, 2016

In November 2012, Lester Nichols flew from Kansas City, Kan., to Manila, Philippines. Nichols, a registered sex offender, did not update his registration status in Kansas City prior to his departure. In December 2012, Manila law enforcement officers arrested Nichols and transferred him to the United States' custody. The United States then charged Nichols for failing to comply with the registration requirements of the Sex Offender Registration and Notification Act (SORNA). The Supreme Court will decide whether SORNA requires sex offenders who move to foreign countries to update their registration status in the U.S. jurisdiction where they used to reside. Nichols argues that a sex offender who moves to a foreign jurisdiction does not need to update his or her registration status. The United States maintains that SORNA aims to regulate offenders who move abroad. Full text available at www.law.cornell.edu/supct/cert/15-5238. ☉

Wittman v. Personhuballah (14-1504)

Court below: *U.S. Court of Appeals for the Second Circuit*
Oral argument: March 21, 2016

In 2012, Virginia's congressional redistricting plan increased the Third Congressional Dis-

trict's black voting-age population from 53.1 percent to 56.3 percent. The Supreme Court will consider whether the Virginia's redistricting plan impermissibly relied on race in drawing congressional districts and whether Republican legislators have standing to appeal the lower court's ruling, which struck down the original plan. The appellants in this case, including Rep. Rob Wittman, contend that political considerations, not race, predominated the redistricting plan. They also argue that the Republican legislators were injured because the redistricting plan affected their reelection chances. But several voters, including Gloria Personhuballah, argue that the Third District was drawn with race as the predominant factor. Personhuballah maintains that the Republican legislators lack standing because they have not suffered any injury as a result of redistricting. This case could change who can challenge potentially discriminatory redistricting plans and what constitutes racial gerrymandering. Full text available at www.law.cornell.edu/supct/cert/14-1504. ⊙

RJR Nabisco v. European Community (15-138)

Court below: *U.S. Court of Appeals for the Second Circuit*
Oral argument: March 21, 2016

The European Community sued RJR Nabisco, a cigarette manufacturer, under the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1961 *et seq*. RICO imposes civil and criminal penalties on racketeering activity. The European Community alleges that RJR Nabisco ran an international money laundering operation abroad. This case presents the Supreme Court with the opportunity to determine the jurisdictional limits of RICO. RJR Nabisco maintains that RICO should not apply extraterritorially. The European Community counters that Congress clearly indicated that RICO's reach could extend extraterritorially when the underlying offense is extraterritorial. The Court's resolution of this case may alter the jurisdictional status of RICO and will affect business interests on both sides of the Atlantic. Full text available at www.law.cornell.edu/supct/cert/15-138. ⊙

Puerto Rico v. Franklin California Tax-Free Trust (15-233)

Court below: *U.S. Court of Appeals for the First Circuit*
Oral argument: March 22, 2016

Many of Puerto Rico's municipalities are in financial crisis, and public utility companies are facing insolvency. In this consolidated case, the Supreme Court will determine whether Chapter 9 of the federal Bankruptcy Code preempts Puerto Rican laws permitting distressed municipalities to restructure their debt. Puerto Rico and its Government Development Bank assert that Puerto Rico is not prevented from passing local bankruptcy laws because the U.S. Congress has not directly addressed territorial law in this area. But public utility creditors Franklin California Tax-Free Trust and BlueMountain Capital Management, LLC, argue that Congress preempted any state or territorial municipal bankruptcy legislation in an effort to ensure a uniform federal bankruptcy standard. The Court's ruling will impact Puerto Rican municipalities' ability to provide essential services to their residents, as well as the rights of creditors to collect on their debts. Full text available at www.law.cornell.edu/supct/cert/15-233. ⊙

CRST Van Expedited Inc. v. Equal Employment Opportunity Commission (14-1375)

Court below: *U.S. Court of Appeals for the Eighth Circuit*
Oral argument: March 28, 2016

The Supreme Court will decide whether the basis for awarding attorney's fees to a defendant can arise from Equal Employment Opportunity Commission's (EEOC's) failure to comply with pre-suit obligations pursuant to Title VII of the Civil Rights Act of 1964. CRST asserts that Title VII and Court precedent do not require defendants to "prevail on the merits" to be awarded attorney's fees, and that, even if they do, CRST prevailed on the merits in this case. On the other hand, EEOC contends that both Title VII and Court precedent require the party to have prevailed on the merits to receive attorney's fees, meaning that the judgment must bar further litigation on the matter. The outcome of this case implicates the incentives for EEOC to comply with its obligations in pre-suit investigations in Title VII actions. Full text available at www.law.cornell.edu/supct/cert/14-1375. ⊙

Betterman v. Montana (14-1457)

Court below: *Montana Supreme Court*
Oral argument: March 28, 2016

In this case, the Supreme Court will decide whether the delay between a criminal defendant's guilty plea and sentencing violates the Speedy Trial Clause of the Sixth Amendment. Brandon Thomas Betterman argues that the fundamental nature of the Speedy Trial Clause, as well as the Supreme Court's precedent, supports applying the clause to delays in a defendant's sentencing. Montana counters that the Speedy Trial Clause was never intended to apply to sentencing and that the Supreme Court's precedent supports this position. The outcome of this case could affect the ability of convicted defendants to mount an adequate defense at sentencing. Full text available at www.law.cornell.edu/supct/cert/14-1457. ⊙

Sheriff v. Gillie (15-338)

Court below: *U.S. Court of Appeals for the Sixth Circuit*
Oral argument: March 29, 2016

The Supreme Court will consider whether the Fair Debt Collection Practices Act (FDCPA) applies to lawyers known as "special counsel," who are appointed by a state Attorney General to collect debts owed to the state, during the performance of their duties. Various lawyers and their firms, appointed as special counsel by the Ohio Attorney General, argue that special counsel are properly defined as state "officers," making special counsel exempt from the FDCPA. Pamela Gillie and Hazel Meadows, Ohio debtors, counter that special counsel are not "officers" but independent contractors subject to the FDCPA's requirements. Gillie and Meadows also argue that use of Attorney General letterhead by special counsel to collect a debt is a "false, deceptive, or misleading representation" in violation of § 1692e of the FDCPA (15 U.S. Code § 1692e). The Court's decision could alter state sovereignty to collect debts and the power of state attorneys general. Full text available at www.law.cornell.edu/supct/cert/15-338. ⊙

Ross v. Blake (15-339)

Court below: *U.S. Court of Appeals for the Fourth Circuit*
Oral argument: March 29, 2016

The Supreme Court will decide whether a reasonable belief exception applies to the Prison Litigation Reform Act (PLRA), 42 U.S.C. 1997(e). The PLRA requires that "[n]o action shall be brought with respect to prison conditions . . . until such administrative remedies as are available are exhausted." Respondent Shaidon Blake, an inmate serving a life sentence in Maryland state prison, sued two prison officers, Michael Ross and James Madigan (collectively, "Ross"), in federal court for injuries sustained during an altercation. Blake did not first pursue relief through Maryland's formal Administrative Remedy Process (ARP), but instead filed a complaint with the prison's Internal Investigations Unit (IIU). Ross argues that because the PLRA's mandate is strict, Blake lacks standing under the law to sue. He contends that both congressional intent and the express text of the statute clearly foreclose the judiciary's ability to import any "traditional" exceptions to administrative exhaustion into the PLRA. But Blake asserts that the IIU investigation precluded the option of pursuing any other administrative remedy. Even if it had not, he contends that the ARP system is far too complex to qualify as "available" under federal law. Consequently, Blake holds that the Court need not reach the issue presented because he properly exhausted all available remedies. The Court's decision could affect prison management and prisoners' rights. Full text available at www.law.cornell.edu/supct/cert/15-339. ⊙

Welch v. United States (15-6418)

Court below: *U.S. Court of Appeals for the Eleventh Circuit*
Oral argument: March 30, 2016

In this case, the Supreme Court will decide whether *Johnson v. United States*, 135 S. Ct. 2551 (2015), should apply retroactively. If so, the Court may decide whether the sudden snatching of a purse constitutes a "violent felony" under the Armed Career Criminal Act (ACCA). Gregory Welch was sentenced to a mandatory minimum 15 years of prison under the ACCA because he had three previous violent felony convictions. Subsequently, Welch challenged his sentence, arguing that one of the predicate convictions, Florida's strong-arm robbery law, was not a violent felony. Both the district court and the U.S. Court of Appeals for the Eleventh Circuit disagreed, relying on the so-called "residual clause" of the ACCA. On appeal to the Supreme Court, Welch contends that *Johnson* struck down the residual clause as unconstitutional. Welch and the United States both argue that *Johnson* should be applied retroactively. Further, Welch argues that because *Johnson* should be applied retroactively and his conviction was based solely on the portion of the ACCA that was deemed unconstitutional, his conviction should be vacated. But the United States argues that the case should be remanded to the Eleventh Circuit to decide whether a sudden snatching of a purse constitutes a violent felony under the constitutionally valid "elements prong" of the ACCA. The Court's decision could increase ACCA-related litigation and decrease the length of some defendants' sentences. Full text available at www.law.cornell.edu/supct/cert/15-6418. ⊙