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.

Husted v. Randolph Institute (16-980)

Court below: *U.S. Court of Appeals for the Sixth Circuit*
Oral argument: Jan. 10, 2018

Question as Framed for the Court by the Parties

Does 52 U.S.C. § 20507 permit Ohio's list-maintenance process, which uses a registered voter's voter inactivity as a reason to send a confirmation notice to that voter under the National Voter Registration Act of 1993 (NVRA) and Help America Vote Act (HAVA)?

Facts

Ohio uses two methods for removing individuals who are no longer eligible to vote. The first method is the National Change of Address (NCOA) database, in which each county's Board of Elections (BOE) sends confirmation notices to the individuals identified by the list of address changes. To stay on the list of registered voters, individuals must then either respond to their confirmation notice or update their registration information, and must vote at least once during a four-year period containing two general federal elections.

The second method—dubbed the "supplemental process"—is like the NCOA process, except for the way that the confirmation notice is triggered. Instead of using the NCOA database, the BOE compiles a list of voters who have not been "active" for two years, which includes not voting, not filing a change of address form, and not filing any voter registration card. The BOE sends a confirmation notice to each of these voters, and like the NCOA process, the voter must either respond to the confirmation notice or update their registration information, and must participate in an election at least once during a four-year period that contain two general federal elections to remain registered to vote. Further, under the Supplemental Process, a voter may be removed from the voter rolls after being inactive for six years, even if they remain eligible to vote otherwise.

Respondents A. Philip Randolph Institute, the Northeast Ohio Coalition for the Homeless, and Larry Harmon filed suit to enjoin petitioner Ohio Secretary of State Jon Husted from removing voters from the voter rolls through the Supplemental Process. First, Randolph claimed that Ohio's supplemental process unlawfully removes registered voters from the rolls due to a failure to vote, a violation of § 8 of the NVRA. Second, Randolph claimed that the confirmation notices are inadequate according to the standards under § 8 of NVRA.

On June 29, 2016, the district court denied Randolph's motion for summary judgment. The court held that (1) using voter inactivity as a "trigger" for sending confirmation notices did not violate the NVRA, and (2) the issue concerning the confirmation notices was moot because the secretary had already promised to use new forms that better accorded with the NVRA's form standards. Randolph appealed the next day.

On appeal, the Sixth Circuit reversed and remanded the case. The court ruled that the "trigger" for sending confirmation notices under Ohio's supplemental process amounted to removing voters from the eligibility list simply for not voting. It held that this practice violated § 8 of the NVRA. Additionally, the Sixth Circuit disagreed with the district court on the mootness of the confirmation notices issue. The Sixth Circuit ruled that, despite assurances to change the form of the confirmation notice, the secretary had failed to clarify that the new form would remedy the shortcomings of the former one. For this reason, the issue was not moot. Following this decision, the Supreme Court granted certiorari to hear this case.

Analysis

AUTHORIZATION UNDER NVRA OR VIOLATION OF NVRA

Husted contends that Ohio's supplemental process is permitted under the NVRA. Husted points to 52 U.S.C. § 20507(b)(2)'s text and previous Supreme Court interpretations of the words "by reason of" to argue that the statute merely prohibits using non-voting as the proximate-cause of removing voters from voter-registration lists. In other words, Husted asserts that a voter's failure to respond to the confirmation notice, not his earlier failure to vote, should be considered the only proximate cause of removal.

Husted argues that the practice of using nonvoting to issue warnings to voters about potential removal not only complies with the NVRA, but was a common practice among the states when the NVRA was enacted and its use is supported by legislative history. Absent explicit prohibition of this practice, Husted contends that the Court should not interpret the NVRA as implicitly prohibiting a practice that was widespread at the time of its enactment. Husted asserts that the Sixth Circuit erred by interpreting § 20507(b)(2) as requiring an actual-cause connection, applying § 20507(b)(2) to the notice sent to nonvoters, and misinterpreting the connection between § 20507(b)(2) and the notice requirement in § 20507(d)(1).

Randolph argues that the failure to vote does not have to be the proximate cause of removal for the NVRA to be violated—the cases cited by Husted involved tort statutes or explicitly included tort or criminal law principles that are inapplicable here. Randolph contends that the failure to vote under Ohio's supplemental process meets this requirement anyway because notices are sent based on nonvoting, and it

is foreseeable that people may not respond to a notice when their circumstances have not changed.

Randolph also counters that Ohio's supplemental process violates the NVRA. Randolph argues that removal of voters under the NVRA is limited to five specified instances, but because the supplemental process does not remove voters based on any of these circumstances, it violates the NVRA. Randolph further contends that the NVRA should be interpreted broadly as prohibiting list-maintenance programs that directly or indirectly base removal on nonvoting. Randolph asserts that, because Ohio's supplemental process identifies voters to send notices to by their failure to vote, it results in removal based on nonvoting.

HELP AMERICA VOTE ACT AMENDMENTS

Husted argues that HAVA clarifies any ambiguity about whether § 20507(b)(2) barred sending notices to nonvoters. Husted asserts that Congress amended § 20507(b)(2) to settle a dispute between the Department of Justice (DOJ) and the states regarding whether § 20507(b)(2) regulates who notices can be sent to when voters are removed under § 20507(d)(1). Husted maintains that Congress sided with the states by adding a provision stating that § 20507(b)(2) could not be viewed as restricting a state from using § 20507(d)(1) to remove voters from voter-registration lists. Husted claims that using a voter's failure to respond to a notice as the basis for removal from the list eliminates any causal connection between their failure to vote and subsequent removal. Husted contends that holding otherwise would allow § 20507(b)(2) to restrict a state's ability to remove individuals under § 20507(d)(1) in certain circumstances in direct contradiction to HAVA.

Husted asserts that another HAVA section supports his position—this section requires that states maintain statewide registration lists, removing voters who do not respond to a notice after not voting in two consecutive general election cycles. But voters cannot be removed only for failing to vote, which, according to Husted, limits the reach of § 20507(b)(2). Husted argues that under Ohio's supplemental process, voters are removed only after both failing to vote and failing to respond to a notice—in accordance with the NVRA and its requirements. Husted maintains that the Sixth Circuit erred by incorrectly interpreting HAVA's text and purpose, misconstruing HAVA's clarification as an exception, and finding that sending notices based on nonvoting violated the NVRA.

Randolph counters that HAVA confirms that Ohio's supplemental process violates the NVRA. Randolph asserts that HAVA clarified that nonvoting after a notice was sent should be considered but that HAVA did not otherwise alter the NVRA's prohibition against removing voters because of nonvoting because there is no evidence of congressional intent to significantly change the NVRA. Randolph further argues that HAVA § 303 confirms that § 20507(d)(1) cannot be invoked if a voter has changed addresses based on their failure to vote because § 303 uses the same language as § 20507(b)(2). Randolph contends that Husted's interpretation creates several problems with other provisions in the NVRA. The more cohesive interpretation is that a failure to vote cannot trigger § 20507(d)(1)'s notice procedure used to remove voters.

Randolph maintains that Husted's interpretation is not supported by HAVA's legislative history, citing a Federal Election Commission report on NVRA. Randolph contends that this report indicated that voter-registration lists should be verified by checking the list against the Postal Service's records or mailing non-forwardable notices to everyone on the list and using returned mail as an indication of a change of address. Randolph argues that the DOJ has regularly interpreted processes like the supplemental process as violating the NVRA until recently when it changed its position. Randolph claims that there is no evidence that Congress changed the DOJ's consistent interpretation in favor of allowing the states to use § 20507(d)(1) based on nonvoting.

Discussion

CORRUPTED VOTER ROLLS VERSUS DISENFRANCHISEMENT

The American Civil Rights Union (ACRU), in support of Husted, argues that Ohio's process for maintaining its voter rolls should be upheld because there are millions of voter registrations in the United States that are either invalid or inaccurate and thus strong voter roll maintenance is an important priority. The ACRU points to a study conducted by the Public Interest Foundation that found that in 141 counties in 21 states, there are more registered voters than there are voting-age residents. The ACRU maintains that tools, like Ohio's supplemental process, are appropriate to serve the important goal of keeping voters lists updated. Echoing these sentiments, a group of former attorneys of the Civil Rights Division of the Department of Justice argue that the goal of combatting voter fraud justifies allowing Ohio to continue utilizing its supplemental process. The former DOJ attorneys cite a study by the Heritage Foundation that documents 938 recent convictions for voter fraud in the United States, and argue that accurate voter rolls are highly instrumental in preventing voter fraud.

Several American history professors, in support of Randolph, aver that, notwithstanding the intent to combat voter fraud, Ohio's system of updating voter rolls disproportionately disenfranchises minority voters. The professors argue that minority voters are less likely to participate in elections and, since Ohio's system identifies those who have not voted recently for removal from the voter rolls, minorities are disproportionately affected. The NAACP maintains that under Ohio's system, African-Americans are disproportionately placed on the inactive voter list. The Asian-Americans Advancing Justice and the VoteVets Action Fund argue that Asian-Americans, Latinos, and service members already have low turnouts at the polls, and Ohio's supplemental process will further decrease turnouts.

VOTER PERCEPTIONS AND INTEGRITY OF OUR DEMOCRACY

The former DOJ attorneys, arguing in support of Husted, assert that systems for updating voter rolls and combating voter fraud are fundamental to maintaining the integrity of federal elections. The former DOJ attorneys insist that honest citizens will be excluded from the democratic process if they believe that the democratic system is corrupted or untrustworthy. To combat the perception of a corrupt system, the former DOJ attorneys maintain that states need options like Ohio's supplemental process to maintain their voter registration rolls. Judicial Watch Inc. claim that low voter turnouts may be a result of Americans having little faith in the integrity of the democratic process. Judicial Watch argues that restoring public confidence in the integrity of elections is an important interest and, to prevent disillusionment with the electoral process, states must use tools like Ohio's supplemental process.

The Libertarian Party of Ohio, arguing in support of Randolph, maintains that Ohio's system for purging voters from the active list is more damaging to the integrity of the democratic process than helpful. According to the Libertarian Party of Ohio, the main groups who are affected by Ohio's supplemental process are those that do not vote, and many of those who do not vote are disaffected third-party voters who are dissatisfied with the two-party system that characterizes most elections. By stripping the right to vote from voters who are already disillusioned with the electoral process, Ohio's system does nothing to assuage these voters' feelings of disillusionment with the current democratic process. The professors point out that many eligible voters choose not to vote. The professors argue that it is undemocratic to take away someone's right to vote because they exercised their right *not* to vote in a recent election. The Libertarian National Committee also argues that "principled non-voting" is an important way for citizens to express their discontent with the candidates, the electoral process, and the rules governing elections, and that a system that burdens this right cannot stand. ⊙

Written by Larry Blocho and Ryan Powers. Edited by Karen Smeda.

McCoy v. Louisiana (16-8255)

Court below: *Louisiana Supreme Court*
Oral argument: Jan. 17, 2018

Question as Framed for the Court by the Parties

Whether it is unconstitutional for defense counsel to admit an accused's guilt to the jury over the accused's express objection.

Facts

On May 29, 2008, a grand jury indicted Robert Leroy McCoy for three counts of first degree murder. McCoy entered a plea of not guilty to all charges. The state of Louisiana informed McCoy that it would seek the death penalty against him. After initially being represented by the public defender's office, McCoy represented himself for about one month and subsequently retained Larry English as counsel.

Throughout the pre-trial proceedings, McCoy and English disagreed on several trial strategy issues, including whether to present an alibi, whether to subpoena evidence, and whether to admit guilt. Two days before the trial, McCoy requested to discharge and replace English with two new attorneys, but the trial court rejected the request as untimely and ordered English to remain McCoy's counsel. McCoy then invoked his right to self-representation, which the court also rejected as untimely.

In his opening statement, English explicitly conceded McCoy's guilt and argued that McCoy had emotional issues which impaired his ability to function. Part way through the trial, English informed the court that the defendant would testify against his advice. McCoy then testified, presenting an alibi defense. The jury returned a verdict of guilty on all counts and recommended the death sentence.

Under new counsel provided by the Louisiana Capital Assistance Center, McCoy appealed his convictions and death sentence to the Supreme Court of Louisiana. McCoy argued that the lower court wrongly allowed English to decide whether to concede guilt at trial and denied McCoy his right to counsel of choice and right to self-representation.

The Louisiana Supreme Court rejected McCoy's counsel-of-choice and self-representation claims, relying on Louisiana state precedent and *United States v. Cronic*. The Supreme Court recognized in *Cronic* that the Sixth Amendment grants a defendant the right to effective assistance of counsel, which requires attorneys to adhere to a client's lawful instructions. However, a lawyer is not bound by a client's unlawful requests, such as a request to commit perjury. Furthermore, the Louisiana Supreme Court found that the trial court did not abuse its discretion in denying McCoy's motions to remove English and represent himself. Citing Louisiana state precedent, the court affirmed the trial court's determination that allowing new counsel two days before the beginning of trial would have been an excessive impediment to the trial.

The Louisiana Supreme Court found that the trial court did not err in allowing the defendant's counsel to determine whether to concede guilt because conceding guilt at trial in hopes of preventing a death sentence at the penalty stage is a legitimate strategic choice. Strategic and tactical decisions, the Louisiana Supreme Court explained, are properly made by trial counsel, and therefore English was not required to follow McCoy's instructions.

McCoy petitioned the Supreme Court, which granted certiorari to determine whether his trial lawyer's concession of guilt violated the Sixth Amendment.

Analysis

WHAT LEVEL OF AUTONOMY IS GUARANTEED TO DEFENDANTS UNDER THE SIXTH AMENDMENT?

McCoy argues that allowing his trial attorney to admit McCoy's guilt to the jury, when McCoy desired to maintain his innocence, is a violation of the Counsel Clause of the Sixth Amendment. McCoy asserts that the Sixth Amendment provides that only the accused may decide whether to admit guilt, and the right cannot be abridged simply because the right to assistance of counsel is also exercised. According to McCoy, the right "to have the *assistance* of counsel for *his* defence" means that the defendant has a right to "ultimate authority and control" of his own defense. McCoy points to the established rights of defendants to conduct their own defense, to choose their own counsel, and to take the stand to present their version of events, as extensions of this right. Furthermore, reasons McCoy, because the defendant faces the consequences of pleading guilty, the defendant is the only party that may decide to plead guilty. McCoy also distinguishes his case from past cases in which the Supreme Court said that the defendant did not have to explicitly consent to counsel's admission of guilt, arguing that these cases apply to implicit acquiescence, but not to situations where the defendant explicitly maintains opposition to the admission of guilt.

Louisiana disagrees, claiming that a defendant may exercise absolute control over his defense by electing to represent himself, but argues that a defendant "cedes significant control over his defense" when he accepts representation by counsel. Louisiana asserts that past Supreme Court decisions have established that the attorney-client relationship is based on a principal-agent model, which means that defendants must accept certain decisions of their counsel that do not constitute "fundamental decisions" and the defendant must relinquish the right to make decisions that conflict with the counsel's strategy. Louisiana agrees that only the defendant may make the decision to plead guilty, but argues that "strategically conceding guilt in a capital case is not 'the equivalent of a guilty plea.'" Louisiana

reinforces this distinction by noting that while a guilty plea requires no proof from the prosecution, merely conceding guilt allows the defendant to retain his traditional criminal rights, such as presenting a strong defense during the penalty phase of the trial. Louisiana contends that McCoy seeks to create a category of decisions for which the defendant's explicit consent is not required, but which may not be made if the defendant explicitly objects, where before there were only decisions which required explicit consent and those that did not. This new categorization is unnecessary, according to Louisiana, because it is already the rule that counsel may not concede guilt over the defendant's objection where it would amount to ineffective assistance of counsel or breach ethical rules, which is true for most cases.

DID COUNSEL'S ACTIONS CONFORM TO RECOGNIZED ETHICAL OBLIGATIONS?

McCoy argues that it was improper for the Louisiana Supreme Court to conclude that English's admission of McCoy's guilt was ethically obligated because ethical rules required English to follow McCoy's direction. According to McCoy, going to trial at the direction of the defendant in a "weak case" is not an ethically compromised position for counsel. McCoy points out that ABA Model Rules of Professional Conduct Rule 1.2(a) provides that "a lawyer shall abide by a client's decisions concerning the objectives of the representation." If counsel disagrees with his client, then the ABA rules allow counsel to ask the court to withdraw, but if the court denies withdrawal, then counsel must follow the client's direction, according to McCoy. Unlike a prior case where counsel permissibly threatened to withdraw if the defendant gave false testimony, McCoy argues that English's disagreement with McCoy did not involve the commission of a new crime and that English went too far by effectively testifying against McCoy.

Louisiana argues that English's actions did not breach the Sixth Amendment because counsel's "professional and ethical obligations inform the operation of the Sixth Amendment." Louisiana asserts that conceding guilt was the only course of action consistent with English's ethical obligations. Once English concluded that McCoy's defense theory was unpersuasive, Louisiana argues, the only ethical option was to refuse to allow McCoy to give false testimony and thus refrain from assisting a client in criminal conduct. When English was unable to dissuade McCoy, or withdraw from the case, Louisiana asserts that the only remaining way for English to act ethically was to concede McCoy's guilt. Louisiana contends that where the defendant's guilt was clear, adopting a strategy to avoid the death penalty was in the best interest of the defendant. Louisiana further claims that English's examination of McCoy may have even helped his client by demonstrating his delusions to the jury, regardless of whether a mental capacity defense was legally cognizable, because it raised the possibility of jury nullification.

WHAT IS THE APPROPRIATE REMEDY FOR INEFFECTIVE ASSISTANCE?

McCoy argues that English failed to render effective assistance and failed to meaningfully test the prosecution's case in an adversarial manner, and the proper remedy is an "automatic reversal" and a new trial. According to McCoy, English's admission of McCoy's guilt created a "structural error" in the framework of the trial which deprived McCoy of constitutional rights and therefore requires an immediate retrial. Relying on the three rationales the Supreme Court used to conclude that an error was structural in *Weaver v. Massachusetts*, McCoy argues first that the right to choose whether to admit guilt is designed to protect the defendant from erroneous conviction because it is a guarantee of fairness in affirming the "autonomy of the accused." McCoy then argues that the error was structural because English's admission "changed the entire character of the proceeding" and its repercussions were thus so pervasive as to evade measurement. Thirdly, McCoy asserts that the error was structural because a trial where the defendant's counsel admits the defendant's guilt results in "fundamental unfairness." McCoy concludes that English's actions constitute a structural error and are therefore not subject to a review for harmless error.

Louisiana contends that English rendered effective assistance of counsel. Louisiana argues that a strategy of conceding guilt is not an abdication of the responsibility of adversarial testing because it is a reasonable strategy to focus on mitigating punishment in the penalty phase. Louisiana further argues that the defendant's own objection to a strategy has no bearing on whether counsel renders effective assistance in adopting an otherwise valid strategy. Louisiana also contends that even if there was a partial failure to subject the prosecution's case to adversarial testing, the failure was not complete, as is required for ineffective assistance of counsel claims, because only certain charges were conceded and English otherwise continued a full-throated defense of McCoy. While conceding guilt is rarely the best course of action, where counsel reasonably determines that such is the case, as here, Louisiana claims that it is not improper to concede guilt over the objections of the defendant. If the Supreme Court, however, does find that the Sixth Amendment was violated, Louisiana argues that the question of whether the violation constitutes a structural error or a harmless error is not properly before the Court. Louisiana contends that the Court need not decide the proper remedy to resolve the issue on which it granted certiorari and should therefore remand the case to the Louisiana Supreme Court for further consideration.

Discussion

RESHAPING THE CLIENT-COUNSEL RELATIONSHIP

The Cato Institute, in support of McCoy, argues that allowing an attorney to supersede a client's choice of whether to maintain innocence will upset the necessary confidentiality and zeal of the attorney-client relationship. The Cato Institute states that permitting counsel to admit a defendant's guilt over the defendant's objection will create tension between the two parties and thereby reduce the effectiveness of both parties' strategies, and essentially pit the defendant against the lawyer. A defendant who recognizes that counsel will not adhere to his wishes, the Cato Institute explains, will be reluctant to fully disclose information to his lawyer, which prevents potentially useful information from being utilized to build the defendant's case. The Cato Institute contends that if a defendant chooses to maintain his innocence while counsel refuses to pursue an innocence strategy, the defendant will effectively be forced to argue *pro se*. In such situations, as here, the Cato Institute emphasizes that defendants will likely be forced to testify to put forth a version of the facts which support their arguments. Conversely, the Cato Institute argues, an attorney would have to impeach his own client to pursue a guilt-admittance strategy. The Cato Institute warns that the apparent disunity between the defendant and his counsel will likely prejudice the jury against the defendant. Ultimately, the

Cato Institute cites the failure of both English and McCoy's strategies in McCoy's case to demonstrate how allowing counsel to admit guilt over a defendant's wishes cuts against the effectiveness of both strategies.

On the other hand, Alabama and 10 other states, in support of Louisiana, recognize the necessity of providing defendants with effective legal counsel; however, they argue that counsel must have the leeway to pursue realistic, strategic decisions to avoid the death penalty. Alabama et al. emphasizes that striving to prove a client's innocence during the trial phase may be counterproductive if the trial advances to the penalty stage; failure to concede guilt during the guilt phase may prejudice the jury against the defendant during the penalty phase. Thus, Alabama et al. contends, permitting a defendant to raise a claim for ineffective assistance of counsel based on concession of guilt places an attorney in a double-bind; a defendant may claim that counsel was ineffective in not conceding guilt because not conceding increased the likelihood of a death penalty and dually ineffective in conceding guilt against the client's wishes. Alabama et al. cites McCoy's case to exemplify the ethical dilemma that may face attorneys if McCoy's ineffective-assistance-of-counsel claim is accepted. If attorneys are not permitted to pursue strategic concessions, contends Alabama et al., then even those attorneys in English's position, faced with "damning" evidence against the client, will be compelled to fight for innocence at the trial stage and will have lost credibility when trying to avoid the death penalty during the penalty phase. Rather, Alabama et al. argues, attorneys must have leeway to build credibility with the jury by conceding guilt during the trial stage, to more effectively protect the defendant's life during the penalty phase. ⊙

Written by Connor O'Neil and Abigail Yeo. Edited by Nicholas Halliburton.

EXECUTIVE SUMMARIES

Texas v. New Mexico and Colorado (22o141)

Oral argument: Jan. 8, 2018

Texas filed a complaint against New Mexico and Colorado, pursuant to the Supreme Court's original jurisdiction under Article III, § 2, Clause 2 of the Constitution and Title 28, § 1251(a) of the United States Code, alleging that New Mexico violated the terms of the Rio Grande Compact to which all three states are party. The United States subsequently moved to intervene in the proceedings citing both claims under the Rio Grande Compact and federal reclamation law. In the Special Master's First Interim Report, he suggested that the Court deny New Mexico's motion to dismiss Texas's claim, but grant its motion to dismiss the United States' Complaint in Intervention to the extent that it states a claim under the Rio Grande Compact. The United States argues that the Court must allow it to assert all of its claims against New Mexico because it has a federal interest in the matter. New Mexico and Colorado assert that allowing the United States to proceed with its claims risks re-litigating claims that are already pending at the state level, which they believe is the proper forum for the adjudication of water rights. The Supreme Court's decision in this case will affect the scope with which the United States can proceed as a party in this action. Full text available at https://www.law.cornell.edu/supct/cert/141_orig. ⊙

Florida v. Georgia (22o142)

Oral argument: Jan. 8, 2018

This case asks the Supreme Court to consider whether it should equitably apportion the waters of the Apalachicola-Chattahoochee-Flint River Basin between Georgia and Florida. There is a long history of conflict between the states over Georgia's use of water from the Chattahoochee and Flint rivers. Florida argues that the Supreme Court should impose a water consumption cap on Georgia because Georgia's unreasonable water consumption inflicts real harm on Florida and its ecosystems. Georgia counters that Florida is not entitled to relief in this original jurisdiction action because Florida has not proven that the consumption cap will provide effective redress and Florida has failed to include a necessary party in the litigation. Florida contends that Georgia's water usage has caused a reduction in the flow of the Apalachicola River that has harmed the region's oyster population damaging the regional economy. Moreover, Florida suggests that it is the Court's duty to intervene and apportion the water rights equally between the two states. Georgia disputes that it harmed the oyster population and organizations supporting it argue that upstream states have no duty to maintain or protect water flows to benefit downstream states. Full text available at https://www.law.cornell.edu/supct/cert/142_orig. ⊙

Collins v. Virginia (16-1027)

Court Below: *Supreme Court of Virginia*

Oral argument: Jan. 9, 2018

This case, in which a police officer searched a stolen motorcycle on private property without a warrant, encapsulates a battle between two conflicting Fourth Amendment doctrines. Collins, arrested for receiving stolen property, argues that the police are forbidden from conducting a warrantless search of the area surrounding his home—the curtilage, which receives the same special constitutional protections as the home itself. Collins maintains that allowing the police to search his curtilage erodes Fourth Amendment rights and eliminates an important constitutional constraint on searches. Virginia counters that the officer's search was justified by the automobile exception because people have lowered expectations of privacy in their automobiles, which are heavily regulated property. Furthermore, as automobiles can be quickly moved out of a warrant's jurisdiction, Virginia contends that requiring the police to wait for a warrant is impractical and would impede police investigations. How the Court decides on the constitutionality of the search will determine whether the automobile exception applies to vehicles on private property, or if that exception is superseded by the protections of curtilage. Full text available at https://www.law.cornell.edu/supct/cert/16-1027. ⊙

Byrd v. United States (16-1371)

Court Below: *U.S. Court of Appeals for the Third Circuit*

Oral argument: Jan. 9, 2018

Terrence Byrd was pulled over by a Pennsylvania police officer for violating a state driving law. Eventually, the officer and another police officer discovered that Byrd was driving a rental car but was not a named driver on the rental agreement. Moreover, the officers also discovered that Byrd had a criminal record that included drug, weapon, and assault charges. Ultimately, the officers asked Byrd for permission to search the car, which they assert that Byrd granted, and, the officers found both heroin and illegal

body armor in the car. Byrd challenged the stop and search arguing that it was unlawful. The District Court held that the stop and search was lawful. On appeal, the Third Circuit further recognized that the driver of a rental car who is not listed on the rental agreement did not have a reasonable expectation of privacy. The Supreme Court will likely resolve the Circuit conflict regarding whether a reasonable expectation of privacy exists for a driver in sole possession of a rental vehicle that is not listed as a driver on the rental agreement. Full text available at https://www.law.cornell.edu/supct/cert/16-1371. ⊙

Hall v. Hall (16-1150)

Court Below: *U.S. Court of Appeals for the Third Circuit*
Oral argument: Jan. 16, 2018

The Court will decide when a party may take an immediate appeal in a single district consolidated case under 28 U.S.C. § 1291, the statute addressing appellate jurisdiction of all final decisions made by the district courts of the United States. Elsa Hall argues that § 1291 allows an appeal from a final judgment in a consolidated case even if the judgment does not resolve all claims. On the other hand, Samuel Hall argues that only a judgment resolving all consolidated claims may be appealed under § 1291. This issue arises in every consolidated case in which a district court enters judgment that leaves some claims in the consolidated case unresolved. Accordingly, the case will impact how plaintiffs bring claims and the appeals process in federal courts. Full text available at https://www.law.cornell.edu/supct/cert/16-1150. ⊙

Dalmazzi v. United States (16-961)

Court below: *U.S. Court of Appeals for the Armed Forces*
Oral argument: Jan. 16, 2018

In 2016, President Obama appointed four active-duty military officers already serving on the Army or Air Force Courts of Criminal Appeals (CCAs) to serve as judges on the United States Court of Military Commission Review (CMCR). This case consolidates petitions from eight servicemembers whose appeals were each ruled on in a CCA proceeding by one of the judges also appointed to the CMCR. Dalmazzi and her fellow petitioners, individuals whose sentences were affirmed by one of these judges, challenge the judges' dual appointments as violations of 10 U.S.C. § 973(b)(2), which bars military officers from holding civil offices requiring appointment by the president with the advice and consent of the Senate. Dalmazzi also argues that the Supreme Court has jurisdiction to hear the appeal under 28 U.S.C. § 1259(3). The United States counters that the CMRC judgeship is not a civil office and appointments there do not require advice and consent of the Senate. Additionally, the United States argues that the Supreme Court lacks jurisdiction in some of the consolidated cases. This case creates potential implications for the scope of the Appointments Clause and the Executive Branch's power to select judges. Full text available at https://www.law.cornell.edu/supct/cert/16-961. ⊙

Encino Motorcars LLC v. Navarro (16-1362)

Court Below: *U.S. Court of Appeals for the Ninth Circuit*
Oral Argument: Jan. 17, 2018

The issue in this case involves whether the Fair Labor Standards Act's (FLSA) overtime-pay exemption for "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles," contained in 29 U.S.C. § 213(b)(10)(A), also exempts service advisers. Encino Motorcars argues that the plain language and structure of § 213(b)(10)(A) unambiguously exempt service advisers from the FLSA's overtime requirements. Navarro argues that the plain language and structure of § 213(b)(10)(A) clearly do not exempt service advisers from the FLSA's overtime requirements and that Congress's intent in enacting the exemption and the FLSA as a whole support this interpretation. From a policy perspective, this case is significant because a decision favoring Navarro could force dealerships across the United States to alter their payment systems for service advisers, of which there are around 100,000. Such an outcome could also expose dealerships to retroactive liability and back-pay to settle FLSA claims concerning overtime. Full text available at https://www.law.cornell.edu/supct/cert/16-1362. ⊙