

The Supreme Court - December 11, 2017

On Friday, the Supreme Court granted certiorari and agreed to hear arguments in seven cases:

China Agritech, Inc. v. Resh, No. 17-432: Whether the rule from *American Pipe and Construction Co. v. Utah*, 414 U.S. 538 (1974), tolls statutes of limitations to permit a previously absent class member to bring a subsequent class action outside the applicable limitations period.

Upper Skagit Indian Tribe v. Lundgren, No. 17-387: Does a court's exercise of in rem jurisdiction overcome the jurisdictional bar of tribal sovereign immunity when the tribe has not waived immunity and Congress has not unequivocally abrogated it?

Benisek v. Lamone, No. 17-333: (1) Did the majority of the three-judge district court err in holding that, to establish an actual, concrete injury in a First Amendment retaliation challenge to a partisan gerrymander, a plaintiff must prove that the gerrymander has dictated and will continue to dictate the outcome of every election held in the district under the gerrymandered map? (2) Did the majority err in holding that the *Mt. Healthy* burden-shifting framework is inapplicable to First Amendment retaliation challenges to partisan gerrymanders? (3) Regardless of the applicable legal standards, did the majority err in holding that the present record does not permit a finding that the 2011 gerrymander was a but-for cause of the Democratic victories in the district in 2012, 2014, or 2016?

Sveen v. Melin, No. 16-1432: Does the application of a revocation-upon-divorce statute to a contract signed before the statute's enactment violate the Contracts Clause?

Hughes v. United States, No. 17-155: (1) Whether this Court's decision in *Marks v. United States*, 430 U.S. 188 (1977), means that the concurring opinion in a 4-1-4 decision represents the holding of the Court where neither the plurality's reasoning nor the concurrence's reasoning is a logical subset of the other. (2) Whether, under *Marks*, the lower courts are bound by the four-Justice plurality opinion in *Freeman v. United*

Related Capabilities

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States, 564 U.S. 522 (2011), or, instead, by Justice Sotomayor's separate concurring opinion with which all eight other Justices disagreed. (3) Whether, as the four-Justice plurality in *Freeman* concluded, a defendant who enters into a Fed. R. Crim. P. 11(c)(1) (C) plea agreement is generally eligible for a sentence reduction if there is a later, retroactive amendment to the relevant Sentencing Guidelines range.

United States v. Sanchez-Gomez, No. 17-312: Whether the court of appeals erred in asserting authority to review respondents' interlocutory challenge to pretrial physical restraints and in ruling on that challenge notwithstanding its recognition that respondents' individual claims were moot.

Koons v. United States, No. 17-5716: *At the time of publication, the Question Presented was not yet available for this criminal matter.*