

The Supreme Court - February 27, 2018

The Supreme Court of the United States issued three decisions today:

Merit Management Group, LP v. FTI Consulting, Inc., No. 16-784: Prior to filing for Chapter 11 Bankruptcy, Valley View Downs, which sought to operate a racetrack casino in Pennsylvania, transferred \$55 million to its competitor, Bedford Downs, in exchange for all of Bedford's shares. The trustee, respondent FTI Consulting, sought to exercise its avoidance powers to recover the \$16.5 million of that transaction that was received by Merit Management Group, a 30% shareholder in Bedford Downs. Merit Management claimed that the transfer was exempt from avoidance under the securities safe harbor in 11 U.S.C. §546(e), which provides, *inter alia*, that "the trustee may not avoid a transfer that is a . . . settlement payment . . . made by or to (or for the benefit of) a . . . financial institution . . . or that is a transfer made by or to (or for the benefit of) a . . . financial institution . . . in connection with a securities contract." While neither Valley View Downs nor Merit Management were "financial institutions," Merit Management claimed the safe harbor applied because two financial institutions were the conduits in the transaction – Credit Suisse and Citizens Bank of Pennsylvania. The District Court found for Merit Management, but the Seventh Circuit reversed, holding that §546(e) did not cover transfers where the financial institutions were mere conduits. Today, the Court affirmed, holding that the plain meaning of §546(e) dictates that the only relevant transfer for purposes of the safe harbor is the transfer that the trustee seeks to avoid.

The Court's decision is available [here](#).

Patchak v. Zinke, No. 16-498: The Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians, after receiving formal recognition from the Secretary of Interior in 1999, identified a parcel of land called the "Bradley Property" where it wanted to build a casino, and asked the Secretary to take the Bradley Property into trust under the Indian Reorganization Act. A nearby landowner, petitioner David Patchak, challenged the Secretary's decision to take this land into trust. The Secretary's preliminary objections to

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Patchak's suit on sovereign immunity and prudential standing grounds went to the Supreme Court, which held that the suit may proceed and remanded. After remand, Congress passed the Gun Lake Act, which reaffirmed that the Bradley Property is trust land, and further provided that suits relating to that land "shall not be filed or maintained in a Federal court and shall be promptly dismissed." Based on this new statutory provision, the District Court dismissed Patchak's suit for lack of jurisdiction, and the D.C. Circuit affirmed. Today, a fractured Court affirmed, over Patchak's arguments that the Gun Lake Act's direction of prompt dismissal to a pending lawsuit violated the Constitution's separation of powers principles.

The Court's decision is available [here](#).

Jennings v. Rodriguez, No. 15-1204: Respondent Alejandro Rodriguez brought a class action on behalf of non-citizens who were detained for longer than six months under one of the general immigration detention statutes and had not been afforded a hearing to determine whether their detention was justified. The District Court entered a permanent injunction for the class action plaintiffs in accord with their claim that 8 U.S.C. §§1225(b), 1226(a), and 1226(c) do not authorize "prolonged" detention in the absence of an individualized bond hearing where the Government is required to provide that the detention remains justified. The Ninth Circuit affirmed, applying the canon of constitutional avoidance to construe §§1225(b) and 1226(c) as imposing implicit six-month time limits before detention must continue under §1226(a), and construing §1226(a) as requiring a bond hearing every six months. The Court today reversed and remanded, holding that the canon of constitutional avoidance only permits a court to interpret a statute, not rewrite it, and that the Court of Appeals here adopted implausible constructions of the three immigration provisions at issue.

The Court's decision is available [here](#).