

The Supreme Court - January 14, 2019

On Friday, January 11, 2019, the Supreme Court of the United States granted certiorari in the following eight cases:

Fort Bend County v. Davis, No. 18-525: Whether Title VII’s administrative exhaustion requirement, 42 U.S.C. §2000e-5(b), (f)(1), is a jurisdictional prerequisite to suit, as three Circuits have held, or a waivable claim-processing rule, as eight Circuits have held.

Food Marketing Institute v. Argus Leader Media, No. 18-481: 1) Does the statutory term “confidential” in Exemption 4 of the Freedom of Information Act bear its ordinary meaning, thus requiring the Government to withhold all “commercial or financial information” that is confidentially held and not publicly disseminated— regardless of whether a party establishes substantial competitive harm from disclosure—which would resolve at least five circuit splits? 2) Alternatively, if the Court retains the substantial-competitive- harm test, is that test satisfied when the requested information could be potentially useful to a competitor (as the First and Tenth Circuits have held), or must the party opposing disclosure establish with near certainty a defined competitive harm like lost market share (as the Ninth and D.C. Circuits have held, and as the Eighth Circuit required here)?

Parker Drilling Mgmt. Services v. Newton, No. 18-389: Whether, under the Outer Continental Shelf Lands Act, state law is borrowed as the applicable federal law only when there is a gap in the coverage of federal law, as the Fifth Circuit has held, or whenever state law pertains to the subject matter of a lawsuit and is not preempted by inconsistent federal law, as the Ninth Circuit has held.

Quarles v. United States, No. 17-778: Whether (as two circuits hold) the definition of generic burglary in *Taylor v. United States*, 495 U.S. 575 (1990), requires proof that intent to commit a crime was present at the time of unlawful entry or first unlawful remaining, or whether (as the court below and three circuits hold) it is enough that the defendant formed the intent to commit a crime at any time while “remaining in” the

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building or structure.

Rehaif v. United States, No. 17-9560: Whether the “knowingly” provision of 18 U.S.C. §924(a)(2) applies to both the possession and status elements of a §922(g) crime (which prohibits persons of various statuses from “possess[ing] in or affecting commerce, any firearm or ammunition”), as has been urged by then-Judge, now Justice Gorsuch, or whether it applies only to the possession element, as has been held by the courts.

North Carolina Dept. of Revenue v. Kaestner Family Trust, No. 18-457: Does the Due Process Clause prohibit states from taxing trusts based on trust beneficiaries’ in-state residency?

McDonough v. Smith, No. 18-485: Whether the statute of limitations for a Section 1983 claim based on fabrication of evidence in criminal proceedings begins to run when those proceedings terminate in the defendant’s favor (as the majority of circuits has held) or whether it begins to run when the defendant becomes aware of the tainted evidence and its improper use (as the Second Circuit held below).

Mitchell v. Wisconsin, No. 18-6210: Whether a statute authorizing a blood draw from an unconscious motorist provides an exception to the Fourth Amendment warrant requirement.