

The Supreme Court - June 21, 2018

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

Lucia v. SEC, No. 17-130: The Securities and Exchange Commission (“SEC”) is statutorily authorized to institute administrative proceedings against alleged violators of the securities laws, which may be presided over by the Commission itself or an administrative law judge (“ALJ”). The SEC’s five ALJ’s are selected by other staff members, rather than the Commission itself. When the SEC initiated an administrative proceeding against petitioner Raymond Lucia, he argued that the Commission’s ALJ’s are “Officers of the United States,” and thus subject to the Constitution’s Appointment Clause, which would require that the ALJ’s be appointed by the Commission itself as a “Head[] of Department[].” This argument was rejected and the D.C. Circuit affirmed. The Court today reversed, holding that ALJ’s of the SEC qualify as “Officers of the United States” subject to the Appointments Clause.

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

South Dakota v. Wayfair, Inc., No. 17-494: While a State may lawfully impose a sales tax on a sale by an out-of-state seller to an in-state purchaser, the Court’s prior decisions in *National Bellas Hess, Inc. v. Department of Revenue of Ill.*, 386 U.S. 753 (1967) and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), held that an out-of-state seller could only be required to collect and remit that tax if they had a physical presence in that State – a requirement that was not met when items were ordered by a catalog and merely shipped into the consumer’s State. South Dakota enacted a law that provided for the collection of sales tax from certain remote sellers, and brought a declaratory judgment action as to the statute’s constitutionality against respondent Wayfair, Inc. and other online merchants that had no employees or real estate in South Dakota. The trial court ruled for Wayfair based on this Court’s precedents, and the South Dakota Supreme Court affirmed. Today, the Court vacated and remanded, holding that *Quill* and *National Bellas Hess* – which held that a State cannot require an out-of-state seller with no physical presence in the State to collect and remit sales taxes on goods the seller ships

Related Capabilities

- Appellate
- Securities & Financial Services Litigation & Enforcement
- Tax
- Tax Controversy & Litigation

to consumers in the State – are overruled.

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

Wisconsin Central Ltd. v. United States, No. 17-530: Congress federalized railroad pension plans in the Railroad Retirement Tax Act of 1937, under which private railroads and their employees pay a tax based on employees' incomes, and the federal government in turn provides an employee pension. The tax is limited to taxing employee "compensation," defined as "any form of money remuneration." 26 U.S.C. §3231(e)(1). The question presented here was whether employee stock option plans qualify as taxable "compensation" under the Act. The Court today held that they are not taxable "compensation" under the Railroad Retirement Tax Act, reversing the Seventh Circuit's judgment.

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

Pereira v. Sessions, No. 17-459: Under federal law, the Attorney General has discretion to "cancel removal" of certain non-permanent residents, including for noncitizens who have "been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of [an] application" for cancellation of removal. 8 U.S.C. §1229b(b)(1)(A). The "stop-time rule" ends the period of continuous presence "when the alien is served a notice to appear under section 1229(a) of this title." §1229b(d)(1)(A). Here, Petitioner Wescley Fonseca Pereira – a native and citizen of Brazil – applied for cancellation of removal after he was arrested for a minor motor vehicle violation and detained by DHS after he had been in the country for more than 10 years. Pereira argued to the Immigration Court that the stop-time rule was not triggered by a prior notice to appear he received because it did not include the time and date of his removal hearing – information required under the statute. See §1229(a)(1)(G)(i). The Immigration Judge rejected that argument, the Board of Immigration Appeals agreed, and the First Circuit denied Pereira's petition for review. Today, the Court reversed, holding that if the Government serves a noncitizen with a document that is labeled "notice to appear," but the document fails to specify either the time or place of the removal proceedings, it does not trigger the stop-time rule.

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