

The Supreme Court - June 3, 2019

The Supreme Court of the United States issued four decisions this morning:

Azar v. Allina Health Services, No. 17-1484: Congress has passed a law specific to Medicare, requiring that the government provide the public with advance notice and the opportunity to comment on any “rule, requirement, or other statement of policy” that “establishes or changes a substantive legal standard governing . . . the payment of services.” 42 U.S.C. §1395hh(a)(2). In 2014, the government posted on its website a new policy that, according to the Court, “dramatically—and retroactively—reduced payments to hospitals serving low-income patients,” and without the opportunity for notice-and-comment. Allina Health Services and other hospitals that provided care to low-income Medicare patients in 2012 challenged the government’s failure to follow its notice-and-comment obligations. The District Court found for the government, but the D.C. Circuit reversed and found for the hospitals. Today, the Court affirmed, holding that the government had failed to advance any argument as to why it could evade its statutory notice-and-comment obligations when establishing or changing the “gap”-filling policy at issue here. Justice Gorsuch authored the majority opinion. Justice Breyer dissented, and Justice Kavanaugh did not participate in the case.

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

Fort Bend County v. Davis, No. 18-525: In this Title VII claim, respondent Lois M. Davis brought suit against her former employer, Fort Bend County, for discrimination on account of religion and retaliation for reporting sexual harassment. The District Court granted summary judgment on both claims but the Fifth Circuit reversed the religion-based discrimination claim. It was only on remand that Fort Bend for the first time claimed that the District Court lacked jurisdiction to adjudicate the claim because Davis had failed to properly state a claim for religious discrimination in her Equal Employment Opportunity Commission (“EEOC”) charge. Under the Act, a precondition to commencing a Title VII action in court is that a complainant must first file a charge with the EEOC. 42 U.S.C. §2000e-5(e)(1), (f)(1). The District Court held that this statutory requirement was

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“jurisdictional” and thus nonforfeitable, and dismissed the religious discrimination claim. The Fifth Circuit reversed. The Court today affirmed, unanimously holding in an opinion by Justice Gorsuch, that Title VII’s charge-filing instruction is not jurisdictional, but is instead properly ranked among the array of claim-processing rules that must be timely raised to come into play.

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

Taggart v. Lorenzen, No. 18-489: Petitioner Bradley Taggart filed for bankruptcy under Chapter 7, under which insolvent debtors may discharge their debts by liquidating assets to pay creditors. Taggart obtained a discharge order, which barred creditors from attempting to collect any debt covered by the order, simply citing to the relevant section in the Bankruptcy Code, 11 U.S.C. §727. Prior to filing bankruptcy, Taggart was involved in a breach of contract action with Sherwood Park Business Center in Oregon state court. After the discharge order was issued, the State Court entered judgment against Taggart, upon which Sherwood filed a petition seeking attorney’s fees incurred after Taggart filed his bankruptcy petition. All parties agreed that those attorney’s fees would be discharged unless the debtor (Taggart) “returned to the fray” after filing for bankruptcy. The State Court found Taggart had “returned to the fray” and was thus liable for attorney’s fees, and the Bankruptcy Court agreed, but the District Court found Taggart had not returned to the fray. On remand, the Bankruptcy Court then held Sherwood in civil contempt, applying a standard akin to “strict scrutiny”; Sherwood had been aware of the discharge order and intended the actions which violated it. On appeal, the sanctions against Sherwood were vacated, with the Ninth Circuit concluding that civil contempt is precluded when the creditor has a good faith belief the discharge order does not apply, even if that belief is unreasonable. The Court today vacated and remanded, unanimously holding in an opinion by Justice Breyer that neither a strict scrutiny nor good-faith belief standard is appropriate. Instead, a court may hold a creditor in civil contempt for violating a discharge order if there is no fair ground of doubt as to whether the order barred the creditor’s conduct, *i.e.*, there is no objectively reasonable basis for concluding that the creditor’s conduct might be lawful.

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

Mont v. United States, No. 17-8995: Petitioner Jason Mont was convicted in federal court for drug- and firearm-related felonies. He was sentenced to imprisonment, followed by 5 years of supervised release, which commenced on March 6, 2012 and was to end on March 6, 2017. Four years and three months into his supervised release, on June 1, 2016, Mont was arrested on state drug charges and has remained in state custody since that time. Mont pleaded guilty to the state crimes, and on March 21, 2017, was sentenced to six years state imprisonment, with the judge crediting the ten months Mont had already been incarcerated. Meanwhile, the Federal District Court issued a warrant on March 30, 2017 with respect to Mont’s violation of the terms of his supervised release by virtue of these state convictions. Mont challenged the District Court’s jurisdiction on the basis that his supervised release was set to expire on March 6, 2017. The District Court rejected that argument and ordered Mont to serve an additional 42 months

imprisonment consecutive to the state sentence. The Sixth Circuit affirmed the court's jurisdiction, finding that Mont's supervised-release period was tolled while he was in pretrial detention in state custody. Today, the Court affirmed, concluding that under the statute governing supervised release, 18 U.S.C. §3624, if the court's later imposed sentence credits the period of pretrial detention as time served for the new offense, then the pretrial detention also tolls the supervised-release period. Justice Thomas wrote the majority opinion, joined by Chief Justice Roberts, and Justices Ginsburg, Alito, and Kavanaugh.

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

Today, the Supreme Court granted certiorari in the following three cases:

Retirement Plans Committee of IBM v. Jander, No. 18-1165: Whether the “more harm than good” pleading standard established in *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409 (2014), to state a claim under ERISA for breach of the fiduciary duty of prudence based on inside information, can be satisfied by generalized allegations that the harm of an inevitable disclosure of an alleged fraud generally increases over time.

Allen v. Cooper, No. 18-877: Whether Congress validly abrogated state sovereign immunity via the Copyright Remedy Clarification Act, Pub. L. No. 101-553, 104 Stat. 2749 (1990), in providing remedies for authors of original expression whose federal copyrights are infringed by States.

Holguin-Hernandez v. United States, No. 18-7739: Whether a formal objection after pronouncement of sentence is necessary to invoke appellate reasonableness review of the length of a defendant's sentence.