

## The Supreme Court - March 2, 2020

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**This morning, the Supreme Court of the United States granted certiorari in the following cases:**

**California v. Texas**, No. 19-840; **Texas v. California**, No. 19-1019: A petition for a writ of certiorari and conditional cross-petition were brought with respect to the Fifth Circuit's decision that the Patient Protection and Affordable Care Act's ("ACA") minimum coverage provision, 26 U.S.C. §5000A, was unconstitutional. The petition raises the following three questions: 1) Whether the individual and state plaintiffs in this case have established Article III standing to challenge the minimum coverage provision in Section 5000A(a). 2) Whether reducing the amount specified in Section 5000A(c) to zero rendered the minimum coverage provision unconstitutional. 3) If so, whether the minimum coverage provision is severable from the rest of the ACA. The conditional cross-petition raises two questions: 1) Whether the unconstitutional individual mandate to purchase minimum essential coverage is severable from the remainder of the ACA. 2) Whether the district court properly declared the ACA invalid in its entirety and unenforceable anywhere.

**Fish and Wildlife Serv. v. Sierra Club, Inc.**, No. 19-547: Whether Exemption 5 of the Freedom of Information Act, 5 U.S.C. §552(b)(5) (2012), by incorporating the deliberative process privilege, protects against compelled disclosure of a federal agency's draft documents that were prepared as part of a formal interagency consultation process under Section 7 of the Endangered Species Act of 1973, 16 U.S.C. §1536, and that concerned a proposed agency action that was later modified in the consultation process.

**Borden v. United States**, No. 19-5410: 1) Does the "use of force" clause in the Armed Career Criminal Act (the "ACCA"), 18 U.S.C. § 924(e)(2)(B)(i) encompass crimes with a *mens rea* of mere recklessness? 2) Did the district court violate Mr. Borden's due process rights when it applied to his sentencing a newer, more punitive interpretation of law than that which was in force at the time of his federal offense, such that his guidelines were enhanced from 77 to 96 months to a mandatory minimum sentence of

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15 years to life in prison?