

The Supreme Court - May 13, 2019

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

Apple, Inc. v. Pepper, No. 17-204: Apple's App Store is the only place iPhone users may lawfully buy apps. Although Apple sells the apps directly to iPhone users through the App Store, the apps themselves are generally created by independent app developers. The app developers are allowed to set the retail price for their app (so long as the sale price ends in \$0.99), but must pay Apple a \$99 annual membership fee and give Apple a 30% commission on every sale. Respondents are four iPhone users who brought a putative class action against Apple, alleging that Apple exercised monopoly power in the retail market for the sale of apps and has unlawfully used that monopoly power to force iPhone owners to pay Apple higher-than competitive prices for apps. The District Court dismissed the complaint, holding that because the app developers set the consumers' purchase price, the iPhone users were not "direct purchasers" from Apple as required to sue antitrust violators under *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977). The Ninth Circuit reversed. Today, the Court in a 5-4 opinion affirmed, holding that the plaintiffs purchased apps directly from Apple and therefore are direct purchasers under *Illinois Brick*. Justice Kavanaugh authored the majority opinion, joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan.

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

Cochise Consultancy, Inc. v. United States ex rel. Hunt, No. 18-315: The False Claims Act imposes civil liability for false claims for payment or approval against the Government. Such suits can be brought by the Attorney General, or by a private person known as a relator "in the name of the Government" (a *qui tam* action) in cases in which the Government does not intervene. At issue here is the False Claims Act's statute of limitations for "[a] civil action under section 3730," which must be brought within the latter of 6 years after the statutory violation occurred, 31 U.S.C. §3731(b)(1); or within 3 years after the United States official charged with the responsibility to act knew or should have known the relevant facts, but not more than 10 years after the violation, §3731(b)(2). In

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this case, respondent Billy Joe Hunt filed a *qui tam* action on November 27, 2013 alleging that Cochise had defrauded the Government through early 2007 (more than six years before he filed the complaint). Hunt revealed his knowledge of the alleged fraud to the Government in a November 30, 2010 interview a little less than 3 years before he filed his complaint. The District Court dismissed the action, rejecting an interpretation of §3731(b)(2) as applying in non-intervened actions with the limitations period running from when the official of the United States knew or should have known the relevant facts. The Eleventh Circuit reversed. The Court today affirmed, unanimously holding that the limitations period in §3731(b)(2) is available in a relator-initiated suit in which the Government has declined to intervene, and that the private person who has initiated the *qui tam* suit cannot be deemed to be the official of the United States whose knowledge triggers §3731(b)(2)'s 3-year limitations period.

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

Franchise Tax Bd. of Cal. v. Hyatt, No. 17-1229: Respondent Gilbert Hyatt, a long-time California resident, earned substantial income from a patent. When Hyatt filed his tax returns listing Nevada as his primary place of residence (after renting an apartment, registering to vote, opening a bank account, and acquiring a driver's license in Nevada), the Franchise Tax Board of California ("Board") was suspicious Hyatt's move was a sham to take advantage of the fact Nevada did not collect personal income tax. Hyatt sued the Board in Nevada state court, claiming it had committed torts in its audit of him. The Court previously granted review of this case twice, first holding that under the Full Faith and Credit Clause Nevada could apply its own immunity law to the case rather than California's, and the second time holding that the Full Faith and Credit Clause also required the Nevada court to grant the Board the same immunity Nevada agencies enjoy, including a cap on damages. This third time, the Court granted review to decide whether *Nevada v. Hall*, 440 U.S. 410 (1979) – which held that the Constitution does not bar private suits against a State in the courts of another State – should be overruled. The Court today, in a 5-4 decision, found that *Hall* is contrary to the Constitution's design and the understanding of sovereign immunity shared by the States that ratified the Constitution, and that *stare decisis* did not compel continued adherence to that decision. The Court therefore overruled *Hall* and held that States retain their sovereign immunity from private suits in the courts of other States. Justice Thomas authored the majority opinion, joined by Chief Justice Roberts, and Justices Alito, Gorsuch, and Kavanaugh.

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