

# The Supreme Court Update - December 13, 2023

by Brock Huebner, Ian Blodger, and Jessica M. Leano

Today, the Supreme Court of the United States granted certiorari in seven cases:

**Food and Drug Administration v. Alliance for Hippocratic Medicine; Danco Laboratories, L.L.C. v. Alliance for Hippocratic Medicine**, Nos. 23-235, 23-236:

These consolidated cases address the Fifth Circuit's decision restricting access to mifepristone, a drug used in medication abortions. The Supreme Court previously stayed the enforcement of the Fifth Circuit's decision, maintaining the status quo for mifepristone pending resolution of the merits of the case. Today, the Court granted review over two suits filed by the Food and Drug Administration (FDA) and a drug manufacturer. The questions presented include: (1) Whether doctor and medical group respondents have Article III standing to challenge the FDA's 2016 and 2021 actions with respect to mifepristone's approved conditions of use; (2) whether the FDA's 2016 and 2021 actions were arbitrary and capricious; (3) whether the district court properly granted preliminary relief; and (4) whether the U.S. Court of Appeals for the 5th Circuit erred in upholding the preliminary injunction of the FDA's 2016 and 2021 actions with respect to mifepristone's approved conditions of use based on the court's review of an incomplete administrative record.

**Connelly v. Internal Revenue Service**, No. 23-146: This case presents an issue of federal tax law. The federal estate tax is assessed on the fair market value of all property that passes from the decedent. 26 U.S.C. 2001(a). The fair market value of the decedent's property "is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts." 26 C.F.R. 20.2031-1(b). The question presented is: Whether the proceeds of a life-insurance policy taken out by a closely held corporation on a shareholder in order to facilitate the redemption of the shareholder's stock should be considered a corporate asset when calculating the value of the shareholder's shares for purposes of the federal estate tax.

**Snyder v. United States**, No. 23-108: This case concerns the interpretation of a federal

## Related People

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## Related Capabilities

- Appellate

public corruption statute, 18 U.S.C. § 666, which makes it a crime for state and local officials to corruptly solicit, demand, or accept anything of value in order to be “influenced or rewarded in connection with” government business “involving any thing of value of \$5,000 or more.” The question presented is: Whether section 666 criminalizes gratuities, i.e., payments in recognition of actions the official has already taken or committed to take, without any quid pro quo agreement to take those actions.

**Fischer v. United States**, No. 23-5572: This case involves the scope of 18 U.S.C. § 1512, which generally prohibits witness and evidence tampering. One subdivision of this statute provides that a person commits a crime if the person “otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so.” 18 U.S.C. § 1512(c) (2). The federal government has charged many individuals involved in the January 6 incident with violating this provision. The question presented is: Whether Section 1512(c) prohibits obstruction of acts unrelated to investigations and evidence.

**Thornell v. Jones**, No. 23-982: This is a death penalty case involving an ineffective assistance of counsel claim under the test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). The district court denied habeas relief following an evidentiary hearing on Danny Lee Jones’s ineffective-assistance-of-sentencing-counsel claims. A Ninth Circuit panel reversed the district court. The petitioner contends that the Ninth Circuit made its own findings without reviewing the district court’s findings, and failed to consider all of the evidence—including the aggravating circumstances and the State’s rebuttal—in evaluating Jones’s “new” mitigating evidence, giving no deference to the district court’s detailed factual findings. The question presented is: Whether the U.S. Court of Appeals for the 9th Circuit violated this court’s precedents by employing a flawed methodology for assessing prejudice under *Strickland* when it disregarded the district court’s factual and credibility findings and excluded evidence in aggravation and the state’s rebuttal when it reversed the district court and granted habeas relief.

**Chiaverini v. City of Napoleon, Ohio**, No. 23-50: This case concerns the elements required for asserting a malicious prosecution claim. The question presented is: Whether Fourth Amendment malicious prosecution claims are governed by the charge-specific rule, under which a malicious prosecution claim can proceed as to a baseless criminal charge even if other charges brought alongside the baseless charge are supported by probable cause, or by the “any-crime” rule, under which probable cause for even one charge defeats a plaintiff’s malicious prosecution claims as to every other charge, including those lacking probable cause.