

The Supreme Court Update - January 17, 2023

by Brock Huebner

On Friday, January 13, the Supreme Court of the United States granted certiorari in eight cases:

U.S. ex rel. Schutte v. SuperValu Inc.; U.S. ex rel. Proctor v. Safeway, Inc., Nos. 21-1326, 22-111: These consolidated cases involve the interpretation of the scienter standard under the False Claims Act (FCA). Both cases arise out of the Seventh Circuit, where a divided panel affirmed dismissal of FCA claims against retailers for alleged fraudulent billing involving prescription drugs. The question presented is: Whether and when a defendant's contemporaneous subjective understanding or beliefs about the lawfulness of its conduct are relevant to whether it "knowingly" violated the FCA.

Groff v. DeJoy, No. 22-174: This civil rights and employment law case addresses the standard governing "undue hardship" in employers' accommodations of employees' religious beliefs and practices. The questions presented are: (1) Whether the Court should disapprove the more-than-de-minimis-cost test for refusing religious accommodations under Title VII of the Civil Rights Act of 1964 stated in *Trans World Airlines, Inc. v. Hardison*; and (2) whether an employer may demonstrate "undue hardship on the conduct of the employer's business" under Title VII merely by showing that the requested accommodation burdens the employee's coworkers rather than the business itself.

Tyler v. Hennepin County, No. 22-166: This case involves the Fifth Amendment's "takings clause" and the Eighth Amendment's ban on excessive fines in the context of seizing property to collect unpaid taxes. The questions presented are: (1) Whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the Fifth Amendment's takings clause; and (2) whether the forfeiture of property worth far more than needed to satisfy a debt, plus interest, penalties, and costs, is a fine within the meaning of the Eighth Amendment.

Dupree v. Younger, No. 22-210: This civil procedure case addresses the issue of

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preserving legal issues for appeal. The question presented is: Whether to preserve the issue for appellate review a party must reassert in a post-trial motion a purely legal issue rejected at summary judgment.

Counterman v. Colorado, No. 22-138: This is a First Amendment case involving criminal prosecution for “true threats.” The question presented is: Whether, to establish that a statement is a “true threat” unprotected by the First Amendment, the government must show that the speaker subjectively knew or intended the threatening nature of the statement, or whether it is enough to show that an objective “reasonable person” would regard the statement as a threat of violence.

Yegiazaryan v. Smagin; CMB Monaco v. Smagin, Nos. 22-381, 22-383: These consolidated cases concern the ability of foreign plaintiffs to assert claims under the Racketeer Influenced and Corrupt Organizations (RICO) Act. The questions presented are: (1) Whether a foreign plaintiff states a cognizable civil claim under the RICO Act when it suffers an injury to intangible property, and if so, under what circumstances; and (2) whether a foreign plaintiff with no alleged connection to the United States may nevertheless allege a “domestic” injury under *RJR Nabisco, Inc. v. European Community* sufficient to maintain a RICO Act action based only on injury to intangible property.

Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin, No. 22-227: This statutory interpretation and federal Indian law case considers the extent of sovereign immunity for Native American tribes. The question presented is: Whether the Bankruptcy Code expresses unequivocally Congress’ intent to abrogate the sovereign immunity of Indian tribes. Specifically, whether Native American tribes are encompassed within the Code’s residual clause abrogating sovereign immunity for “other foreign or domestic government[s].”

Pugin v. Garland; Garland v. Cordero-Garcia, Nos. 22-23, 22-331: These consolidated cases involve interpretation of the Immigration and Nationality Act (INA). Under the INA, a noncitizen who is convicted of an “aggravated felony” is subject to mandatory removal and faces enhanced criminal liability in certain circumstances. One aggravated felony is “an offense relating to obstruction of justice.” 8 U.S.C. § 1101(a)(43)(S). The question presented is: To qualify as “an offense relating to obstruction of justice,” 8 U.S.C. § 11001(a)(43)(S), must a predicate offense require a nexus with a pending or ongoing investigation or judicial proceeding?