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The Supreme Court Update - June 24, 2024

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

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

United States v. Skrmetti, No. 23-477: This case concerns the constitutionality of state laws banning gender-affirming medical care for transgender minors. The question presented is: Whether Tennessee Senate Bill 1, which prohibits all medical treatments intended to allow "a minor to identify with, or live as, a purported identity inconsistent with the minor's sex" or to treat "purported discomfort or distress from a discordance between the minor's sex and asserted identity," violates the equal protection clause of the 14th Amendment.

United States v. Miller, No. 23-824: This bankruptcy case addresses a split between U.S. Circuit Courts of Appeals regarding the interactions between state laws and the U.S. Bankruptcy Code. The question presented is: Whether a bankruptcy trustee may avoid a debtor's tax payment to the United States under 11 U.S.C. § 544(b) when no actual creditor could have obtained relief under the applicable state fraudulent-transfer law outside of bankruptcy.

Feliciano v. Department of Transportation, No. 23-861: This case concerns the applicability of a federal differential pay law, 5 U.S.C. § 5538, which ensures armed forces reservists called to serve during a war or national emergency are paid at the same level for their military service as they are paid in their civilian roles. The question presented is: Whether a federal civilian employee called or ordered to active duty under a provision of law during a national emergency is entitled to differential pay even if the duty is not directly connected to the national emergency.

Republic of Hungary v. Simon, No. 23-867: This case concerns a provision of the Foreign Sovereign Immunities Act ("FSIA") permitting the suit of a foreign sovereign in the United States on claims involving rights in property taken in violation of international law, where that property has a commercial nexus with the United States. 28 U.S.C. § 1605(a)(3). The questions presented are: (1) Whether historical commingling of assets

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suffices to establish that proceeds of seized property have a commercial nexus with the United States under the expropriation exception to the FSIA; (2) Whether a plaintiff must make out a valid claim that an exception to the FSIA applies at the pleading stage, rather than merely raising a plausible inference; and (3) Whether a sovereign defendant bears the burden of producing evidence to affirmatively disprove that the proceeds of property taken in violation of international law have a commercial nexus with the United States under the expropriation exception to the FSIA.

Dewberry Group, Inc. v. Dewberry Engineers, Inc., No. 23-900: This trademark case involves the Lanham Act and presents the following question: Whether an award of the "defendant's profits" under the Lanham Act, 15 U.S.C. § 1117(a), can include an order for the defendant to disgorge the distinct profits of legally separate non-party corporate affiliates.

Seven County Infrastructure Coalition v. Eagle County, Colorado, No. 23-975: This case addresses a government agency's obligation to study the environmental effect of an agency action under the National Environmental Policy Act ("NEPA"). The Supreme Court previously ruled in *Department of Transportation v. Public Citizen*, 541 U.S. 752, 770 (2004), that when an agency cannot prevent an environmental effect "due to its limited statutory authority over the relevant actions" the NEPA does not require it to study that effect. The question presented is: Whether the NEPA requires an agency to study environmental impacts beyond the proximate effects of the action over which the agency has regulatory authority.

Stanley v. City of Sanford, No. 23-997: This case concerns the Americans with Disabilities Act ("ADA") and presents the following question: Under the ADA, does a former employee—who was qualified to perform her job and who earned post-employment benefits while employed—lose her right to sue over discrimination with respect to those benefits solely because she no longer holds her job.