

The Supreme Court Update - May 11, 2023

by Brock Huebner

Today, the Supreme Court of the United States issued five decisions:

National Pork Producers Council v. Ross, No. 21-468: This case involved a constitutional challenge to California’s “animal cruelty law” known as Proposition 12 (“Prop 12”), which prohibits the sale of certain veal, pork, and egg products in California if the seller “knows or should know” that the product came from an animal confined—anywhere—“in a cruel manner.” Out-of-state pork sellers challenged Prop 12, arguing it violates the U.S. Constitution’s “dormant Commerce Clause.” The district court dismissed the claims for failure to state a claim, and the Ninth Circuit affirmed. Today, in a fractured decision authored by Justice Gorsuch, the Court affirmed. The Court held that Prop 12 does not violate the “antidiscrimination” principle of the dormant Commerce Clause and rejected the pork sellers’ argument that Prop 12 improperly controls “extraterritorial commerce.” The justices, however, filed four separate opinions addressing whether the pork producers had a stated a viable claim that Prop 12 has an excessive impact on interstate commerce (called a “*Pike* claim” from *Pike v. Bruce Church*, 397 U.S. 137 (1970)). A majority of the agreed that the *Pike* claim failed but for different reasons.

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Santos-Zacharia v. Garland, No. 21-1436: This immigration law case analyzed the administrative exhaustion requirements before federal courts may review decisions from the Board of Immigration Appeals. In this case, a noncitizen in removal proceedings claimed the Board engaged in improper fact-finding. The Fifth Circuit dismissed the case because the improper fact-finding argument was not first raised in a motion to reconsider before the Board. Today, in a 9-0 decision authored by Justice Jackson, the Court held that the federal law at issue, 8 U. S. C. § 1252, did not contain a “jurisdictional” exhaustion requirement (i.e. one not subject to exception), and further held the law did not require petitioners to first seek reconsideration from the Board before seeking review in federal court. Justice Alito, joined by Justice Thomas, concurred in the judgment.

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Financial Oversight and Management Board for Puerto Rico v. Centro de Periodismo Investigativo, Inc., No. 22-96: This case considered whether the federal law creating the Financial Oversight and Management Board for Puerto Rico (“Board”) also abrogated the Board’s sovereign immunity from federal lawsuits. After the Board failed to respond to various requests for information, a non-profit media organization sued the Board under a provision of the Puerto Rican Constitution provision guaranteeing a right of access to public records. Lower courts rejected the Board’s attempt to claim sovereign to avoid the lawsuit. Today, in a 8-1 decision authored by Justice Kagan, the Court held that the Board can claim sovereign immunity. The Court assumed without deciding that Puerto Rico was protected by sovereign immunity and concluded that the Board enjoyed the same protections as an entity of the Puerto Rican government because the federal law creating the Board did not include the clear language required to abrogate sovereign immunity. Justice Thomas filed a dissenting opinion.

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Ciminelli v United States, No. 21-1170: This public corruption case concerned a conviction based on a “right to control” theory of fraud. Louis Ciminelli was convicted of federal wire fraud based on his role in a scheme to rig the bidding process for projects funded from New York’s “Buffalo Billion” investment initiative. Ciminelli’s conviction was based on jury instructions premised on a “right to control” theory, whereby a defendant commits fraud by depriving a victim of the intangible property right to control the use of one’s assets through withholding potentially valuable economic information. Today, in a 9-0 opinion authored by Justice Thomas, the Court held that the “right to control” theory was invalid under the text and structure of federal fraud statutes and accordingly reversed Ciminelli’s conviction. Justice Alito filed a concurring opinion.

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Percoco v. United States, No. 21-1158: This case arose from the conviction of former Governor Andrew Cuomo’s campaign manager, Joseph Percoco, for honest-services fraud under federal law. After resigning from government service to run the Governor’s reelection campaign, Percoco accepted \$35,000 to help a developer navigate State bureaucracy. Percoco argued unsuccessfully that a private citizen cannot commit or conspire to commit honest-services wire fraud based on his own duty of honest services to the public. The Second Circuit affirmed the conviction. Today, in an opinion authored by Justice Alito, the Court reversed, concluding that the jury had been improperly instructed on the proper test for determining whether a private person may be convicted of honest-services fraud. Justice Gorsuch (joined by Justice Thomas) filed a separate opinion concurring in the judgment, raising concerns about the vagueness of the honest-services fraud statute.

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