



ALAN MORRISON SUPREME COURT ASSISTANCE PROJECT

**CERT. PETITIONS OF PUBLIC INTEREST
May 23, 2019**

Prepared by Rylee Sommers-Flanagan, 2018–2019 Project Fellow

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The [Alan Morrison Supreme Court Assistance Project](#) of Public Citizen Litigation Group regularly distributes this watch list to raise awareness of public interest issues presented to the U.S. Supreme Court. The Project monitors petitions for certiorari where the question presented implicates our public interest mission. The Project also offers pro bono assistance to litigants involved in some cases.

[Subscribe to the S. Ct. Watch List](#) to receive an update before each Supreme Court conference. For more information, contact Rylee Sommers-Flanagan, 2018–2019 Supreme Court Assistance Project Fellow, at (202) 588-7713 or supremecourt@citizen.org.

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Resources

LINKS FOR MORE INFORMATION

- ✓ **Supreme Court's Website:**
<http://www.supremecourt.gov>. For information or status updates on a particular petition, click on the Docket Number included in this list for that petition. For news on all petitions, view the Orders List which comes out after each conference:
<http://www.supremecourt.gov/orders/ordersofthecourt.aspx>.
- ✓ **Alan Morrison Supreme Court Assistance Project of Public Citizen:**
<https://www.citizen.org/supreme-court-assistance-project/>. Project information.
- ✓ **SCOTUS Blog:**
<http://www.scotusblog.com>. Frequent Supreme Court updates.
- ✓ **Office of the Solicitor General:**
<http://www.usdoj.gov/osg/supreme-court-briefs>. Briefs filed by the United States.

KEY TERMS & ABBREVIATIONS

Petition for Certiorari <i>Cert. Petition</i>	The brief filed at the Supreme Court by a party who lost in a lower federal or state court, asking the Supreme Court to grant certiorari and review the decision of the lower court. If cert. is granted, the Court will hear the case. If cert. is denied, the decision below stands.
Petitioner	The party who lost in the lower court and is asking the Supreme Court to review the lower court decision.
Respondent	Any party other than the petitioner, but generally the party opposing a grant of certiorari. These parties usually want the Court to <i>deny</i> cert.
BIO <i>Brief in Opposition</i>	The brief in opposition is the brief filed by a respondent in response to the petitioner's petition for certiorari, typically explaining why the Court should not grant the petition.
CFR <i>Call For a Response</i>	Where the respondent has initially waived filing a response, after reading the petition for certiorari but before deciding whether to hear the case, the Court sometimes issues a CFR, or asks the respondent to file a brief in opposition.
Conference	The conference is the meeting the Justices hold to consider whether to grant or deny pending cert. petitions. Conference dates are listed on the current Supreme Court calendar .
CVSG <i>Call for the Views of the Solicitor General</i>	Before deciding whether to hear a case, the Court sometimes invites the Solicitor General to file a brief providing the views of the United States regarding the question presented by the petition. The brief eventually filed is called an "invitation brief." Many of these briefs are available here .
Dist. <i>Distributed</i>	The distribution date is the date on which the cert-stage papers are sent to the Justices' Chambers. When the clerk's office distributes the papers, the docket will indicate the date of the Conference at which the Justices will consider the case.
GVR <i>Granted, Vacated, and Remanded</i>	The Supreme Court sometimes will grant, vacate, and remand the petition for reconsideration, usually in light of an intervening Supreme Court decision.
Held	The Court sometimes holds a petition for later consideration because it raises the same or similar questions as those presented by other petitions or granted cases. The Court will consider the petition again later, usually after announcing a decision in another case.
QP <i>Questions Presented</i>	The question or questions presented in a petition for the Supreme Court to decide. The Court usually does not address issues not included in the QP.
Vide	Occasionally, more than one party will ask the Supreme Court to hear the same case. Marking a petition "Vide" recognizes that it comes from the same lower court opinion as another pending petition and essentially consolidates the cases.

MAY 23 CONFERENCE

17-1678 Hernández v. Mesa (5th Cir.)

BIO 8/6. Reply 8/17. Dist. for 9/24. CVSG 10/1. SG’s Br. 4/11.
Supp. Pet. Br. 4/17. Dist. for 5/16. Dist. for 5/23.

**Jurisdiction:
Cross-Border Shootings**

On whether federal courts can recognize a damages remedy under *Bivens* in the context of a cross-border shooting involving a domestic law enforcement agency, among other issues.

18-309 Swartz v. Rodriguez, Individually & as the Surviving Mother of J.A. (9th Cir.)

BIO 9/18. Dist. for 10/26. CVSG 10/29. SG’s Br. 4/11. Dist. for 5/16.
Dist. for 5/23.

**Jurisdiction:
Cross-Border Shootings**

On whether federal courts can recognize a damages remedy under *Bivens* in the context of a cross-border shooting involving a domestic law enforcement agency, among other issues.

18-483 Box, Commissioner, Indiana Department of Health v. Planned Parenthood of Indiana & Kentucky, Inc. (7th Cir.)

BIO 12/4. Reply 12/18. Dist. for 1/4. Dist. for 1/11. Dist. for 1/18. Dist. for 2/15.
Dist. for 2/22. Dist. for 3/1. Dist. for 3/15. Dist. for 3/22. Dist. for 3/29.
Dist. for 4/12. Dist. for 4/18. Dist. for 4/26. Dist. for 5/9. Dist. for 5/16.
Dist. for 5/23.

**Due Process:
Rational Basis Review**

On whether Indiana’s requirements for the disposal of embryonic and fetal tissue fail rational basis review under the Due Process Clause, among other issues.

18-547 Klein v. Oregon Bureau of Labor & Industries (Or. Ct. App.)

BIO 1/25. Reply 2/11. Dist. for 3/29. Dist. for 4/12. Dist. for 4/18.
Dist. for 4/26. Dist. for 5/9. Dist. for 5/16. Dist. for 5/23.

**First Amendment:
Religion Clauses**

On whether enforcing a state public accommodations law against business owners who refuse to design and create a cake for a same-sex wedding violates the Free Exercise Clause, among other issues.

18-658 Doe v. Boyertown Area School District (3d Cir.)

BIOs 1/18, 1/22. Reply 2/12. Dist. for 5/23.

**Discrimination:
Gender Identity**

On whether a public school violates Title IX or substantive due process when it allows transgender students to use shared restrooms and locker rooms according to their self-identified gender, where all students may use private facilities.

18-740 Al-Alwi v. Trump, President of the United States (D.C. Cir.)
BIO 4/3. Reply 4/16. Dist. for 5/9. Dist. for 5/16. Dist. for 5/23.

**Suspension Clause:
AUMF**

On whether the statutory authority under the Authorization for Use of Military Force to detain the petitioner has expired because the conflict in which he was detained has ended, among other issues.

18-803 Dolin v. GlaxoSmithKline, LLC, fka SmithKline Beecham Corp. (7th Cir.)
BIO 3/25. Reply 4/11. Dist. for 4/26. Dist. for 5/23.

**Food & Drug Administration:
Labeling**

On whether federal law preempts a state-law claim that a drug manufacturer failed to warn of a suicidality risk to people over age 24, where the Food and Drug Administration had required a class-wide warning on suicidality risk for patients under age 24. [Note: This case had been held for No. 17-290, *Merck Sharp & Dohme Corp. v. Albrecht*.]

18-824 Rogers v. Grewal, Attorney General of New Jersey (3d Cir.)
CFR 2/19. BIO 4/19. Reply 5/3. Dist. for 5/23.

**Second Amendment:
Licensing Restrictions**

On whether licensing restrictions that require citizens to show a need to carry a firearm outside the home violate the Second Amendment, among other issues.

18-891 Jim v. United States (11th Cir.)

**Indian Law:
Taxation**

18-895 The Miccosukee Tribe of Indians v. United States (11th Cir.)
CFR 2/19. BIO 4/22. Dist. for 5/23.

On whether benefits derived from gaming revenue under the Indian Gaming Regulatory Act are exempt from federal taxation pursuant to the Tribal General Welfare Exclusion Act, among other issues.

18-921 Roman Archdiocese of San Juan, Puerto Rico v. Feliciano (P.R.)
BIOs 2/1, 2/15. Reply 3/6. Dist. for 3/22. Dist. for 3/29. Dist. for 4/12.
Dist. for 4/18. Dist. for 4/26. Dist. for 5/9. Dist. for 5/16. Dist. for 5/23.

**First Amendment:
Religion Clauses**

On whether the First Amendment allows courts to find that constituent parts of a religious organization are subject to joint and several liability.

18-923 Carter, Next Friend of A.D., C.C., L.G., & C.R. v. Sweeney, Assistant Secretary of Bureau of Indian Affairs (9th Cir.)
BIO 4/17. Reply 5/3. Dist. for 5/23.

**Title VI:
Prospective Relief**

On whether declaratory relief and damages to redress past injuries under Title VI of the Civil Rights Act are moot when no prospective relief is available or sought.

18-935 Monasky v. Taglieri (6th Cir.)
BIO 4/19. Reply 5/7. Dist. for 5/23.

**International Law:
Standard of Review**

On whether a district court’s determination of habitual residence under the Hague Convention should be reviewed de novo on appeal or for clear error, among other issues.

18-937 Manriquez v. Diaz, Acting Secretary, California Department of Corrections & Rehabilitation (Cal.)
BIO 4/19. Reply 5/2. Dist. for 5/23.

**Sixth Amendment:
Juror Bias**

On whether having a similar set of life experiences to a defendant disqualifies a juror for bias under the Sixth and Fourteenth Amendments, and what test should be used to determine bias of that type.

18-1019 Box, Commissioner, Indiana Department of Health v. Planned Parenthood of Indiana & Kentucky, Inc. (7th Cir.)
BIO 4/5. Reply 4/22. Dist. for 5/9. Dist. for 5/16. Dist. for 5/23.

**Abortion:
Undue Burden Analysis**

On whether the court of appeals correctly affirmed a fact-specific preliminary injunction and correctly applied the undue burden analysis to the state statute’s abortion-related requirements.

18-1022 Murphy v. Texas (Tex. Crim. App.)
BIO 4/18. Reply 5/1. Dist. for 5/23.

**Criminal Law:
Death Penalty**

On whether the death penalty violates the Eighth Amendment, among other issues.

18-1171 Comcast Corp. v. National Ass’n of African American-Owned Media (9th Cir.)
BIO 4/10. Reply 4/29. Dist. for 5/23.

**Discrimination:
Race**

On whether a plaintiff can state a claim under 42 U.S.C. § 1981 by alleging that racial discrimination was a motivating factor in the defendant’s refusal to contract, among other issues.

18-1165 Retirement Plans Committee of IBM v. Jander (2d Cir.)
BIO 4/18. Reply 5/6. Dist. for 5/23.

**ERISA:
Fiduciary Duties**

On whether the court below correctly determined that no prudent fiduciary could conclude that “public corrective disclosure of the concealed information that artificially inflated employer stock ... would do ‘more harm than good’” to respondents and other ERISA plan participants, among other issues.

**18-1185 Charter Communications, Inc. v. National Ass’n of African
American-Owned Media (9th Cir.)**
BIO 4/12. Reply 4/29. Dist. for 5/23.

**Discrimination:
Race**

On whether a plaintiff can state a claim under 42 U.S.C. § 1981 by alleging that racial discrimination was a motivating factor in the defendant’s refusal to contract, among other issues.

18-1206 Like v. Transcontinental Gas Pipe Line Co., LLC (3d Cir.)
BIO 4/17. Reply 5/2. Dist. for 5/23.

**Environmental Regulation:
Natural Gas Act Condemnation**

On whether district courts may “enter preliminary injunctions giving private companies immediate possession of land before final judgment in Natural Gas Act condemnations.”

PENDING FOR UPCOMING CONFERENCES

17-664 *Petróleo Brasileiro S.A. v. Universities Superannuation Scheme Ltd.* **Class Actions:**
(2d Cir.) **Class Certification**
BIO 11/14/17. Reply 11/27/17. Dist. for 1/12/18. Mot. to Defer Granted 1/16/18.

On whether Federal Rule 23 requires class certification proponents to show that class membership can be ascertained through administratively feasible means, among other issues.

17-1175 *Poarch Band of Creek Indians v. Wilkes* (Ala.) **Indian Law:**
CFR 4/5. BIO 6/8. Reply 6/27. Dist. for 9/24. CVSG 10/1. SG's Br. 5/21. **Tribal Sovereign Immunity**

On whether an Indian tribe is immune from civil liability for tort claims asserted by non-members.

17-1183 *Airline Service Providers Ass'n v. Los Angeles World Airports* **Preemption:**
(9th Cir.) **Regulation**
BIO 4/25. Reply 5/11. Dist. for 5/31. CVSG 6/4. SG's Br. 5/21.

On whether the “market participant” exception to the Airline Deregulation Act’s preemption of state and local regulations relating to airline prices applies where a city, acting as an airport proprietor, seeks to impose a contractual provision on companies providing services at the airport to enter a “labor peace” agreement with any union that demands one.

17-1498 *Atlantic Richfield Co. v. Christian* (Mont.) **Environmental Regulation:**
BIO 7/2. Reply 7/18. Dist. for 9/24. CVSG 10/1. SG's Br. 4/30. **CERCLA**
Supp. Pet. Br. 5/14. Dist. for 5/30.

On whether “a landowner at a Superfund site is a ‘potentially responsible party’ that must seek EPA’s approval under CERCLA ... before engaging in remedial action, even if EPA has never ordered the landowner to pay for a cleanup,” among other issues.

18-164 *First Solar, Inc. v. Mineworkers’ Pension Scheme* (9th Cir.) **Securities Litigation:**
BIO 9/5. Reply 9/19. Dist. for 10/5. CVSG 10/9. SG's Br. 5/15. **Loss Causation**

On whether a private securities-fraud plaintiff may establish loss causation based on a decline in market price of a security where the triggering event did not reveal the fraud on which the claim is based.

18-486 *Toshiba Corp. v. Automotive Industries Pension Trust Fund* **Securities Litigation:**
(9th Cir.) **Domestic Transaction**
CFR 11/2. BIO 12/12. Reply 12/21. Dist. for 1/11. CVSG 1/14. SG's Br. 5/20.

On whether the Securities Exchange Act applies in all circumstances when a claim is based on a domestic transaction.

[18-543](#) **State Correctional Institution at Fayette v. Reeves (3d Cir.)**
CFR 12/17. BIO 2/15.

**Criminal Law:
Habeas Relief**

On whether evidence that was available but not presented at trial may satisfy the new evidence requirement of the actual innocence exception to permit review of an untimely habeas petition.

[18-575](#) **YPF S.A. v. Petersen Energia Invesora S.A.U. (2d Cir.)** **Foreign Sovereign Immunities Act:**
[18-581](#) **Argentine Republic v. Petersen Energia Invesora** **Commercial Activity**
S.A.U. (2d Cir.)
BIO 12/5. Reply 12/18. Dist. for 1/4. CVSG 1/7. SG's Br. 5/21.

On whether the “commercial activity” exception to sovereign immunity is inapplicable to suits challenging conduct inextricably intertwined with a sovereign act of expropriation.

[18-735](#) **Maricopa County, Arizona v. Melendres (9th Cir.)**
BIOs 3/11, 4/10. Reply 4/24.

**Civil Penalties:
Remedial Injunctions**

On whether the court of appeals erred in affirming the district court’s remedial injunction after a civil contempt trial, based upon detailed factual findings that the county and sheriff had repeatedly violated court orders, among other issues.

[18-781](#) **Baltimore County, Maryland v. Equal Employment Opportunity**
Commission (4th Cir.)
CFR 2/6. BIO 5/8.

**Discrimination:
Remedy**

On whether the court below erred in holding that retroactive monetary relief in the form of back pay is a mandatory legal remedy under the Age Discrimination in Employment Act.

[18-837](#) **Harris, in His Official Capacity as State Health Officer v. West**
Alabama Women’s Center (11th Cir.)
BIO 3/4. Reply 3/15.

**Abortion:
Safe Medical Practices**

On whether the Eleventh Circuit correctly held that a ban on the “usual abortion method” in the second trimester is unconstitutional as applied, where the proposed means for complying with the law are infeasible and dangerous to women.

[18-854](#) **Alvarez v. City of Brownsville, Texas (5th Cir.)**
CFR 1/31. BIO 5/1. Dist. for 6/6.

**Criminal Law:
Plea Agreement Problems**

On whether *Brady* and due process principles require the government to disclose exculpatory evidence before entering a plea agreement with a criminal defendant, among other issues.

18-866 Illinois Central Railroad Co. v. Tennessee Department of Revenue (6th Cir.) Preemption:
CFR 2/13. BIO 3/15. Reply 4/2. Railroads

On whether a state law imposing a fuel tax on railroads but not motor carriers discriminates against railroads under 49 U.S.C. § 11501(b)(4), which prohibits favoring railroad competitors.

18-882 Babb v. Wilkie, Secretary of Veterans Affairs (11th Cir.) Discrimination:
BIO 5/20. Age

On whether the federal-sector provision of the Age Discrimination in Employment Act requires a plaintiff to prove that age was a but-for cause of the challenged personnel action, among other issues.

18-911 Intermountain Health Care, Inc. v. United States ex rel. Polukoff (10th Cir.) False Claims Act:
CFR 2/21. BIOs 4/24. Particularity

On whether, when only the defendant possesses information needed to satisfy Rule 9(b)'s particularity requirement, the fair notice purpose of the requirement is satisfied, among other issues.

18-928 Midwest Machining, Inc. v. McClellan (6th Cir.) Title VII:
BIO 5/6. Dist. for 6/6. Tender Back Rule

On whether the common-law tender-back rule applies to Title VII and Equal Pay Act claims, among other issues.

18-942 Forgas v. Shanahan, Acting Secretary of Defense (4th Cir.) Title VII:
BIO 5/6. Dist. for 6/6. Materially Adverse Action

On whether denial of a request to transfer to a lateral position can be a "materially adverse action" under Title VII for purposes of establishing discrimination or retaliation.

18-929 Marcus & Millichap Real Estate Investment Services, Inc. v. Weiler (Cal. Ct. App.) Arbitration:
CFR 2/27. BIO 4/29. Reply 5/14. Dist. for 5/30. State Law

Scott Nelson of Public Citizen is co-counsel for respondent.
Brief in Opposition

On whether the court of appeals was right to decide a question referred to it by an arbitration panel, among other issues.

[18-940](#) **Hancock v. Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division (5th Cir.)**
CFR 2/21. BIO 5/15.

**Criminal Law:
Habeas Relief**

On whether evidence that was available but not presented at trial constitutes “new” evidence for purposes of the “actual-innocence” gateway that permits review of an untimely habeas petition.

[18-963](#) **Hill v. City of Jackson, Michigan (6th Cir.)**
CFR 2/27. BIO 4/5.

**Due Process:
Demolished Property**

On whether a city’s demolition of a recently purchased home without ensuring notice was provided to the new owner violated due process.

[18-970](#) **Mitchell v. Tulalip Tribes of Washington (9th Cir.)**
CFR 3/5. BIO 5/6. Dist. for 6/6.

**Indian Law:
Tribal Sovereign Immunity**

On whether sovereign immunity bars federal courts from considering whether tribes can exercise taxing authority over real property owned by non-Indians pursuant to allotments authorized by a prior treaty.

[18-972](#) **Martoma v. United States (2d Cir.)**
BIO 4/26. Reply 5/14. Dist. for 5/30.

**Criminal Law:
Insider Trading**

On whether, in prosecuting insider trading, the government must show that a corporate insider who provided inside information to an outsider received a personal benefit or if it is enough to show that the corporate insider intended to confer a benefit on the recipient of the information.

[18-976](#) **Ass’n of American Railroads v. Department of Transportation (D.C. Cir.)**
BIO 4/26. Reply 5/13. Dist. for 5/30.

**Administrative Procedure:
Rulemaking**

On whether the Passenger Rail Investment & Improvement Act’s grant of rulemaking power to Amtrak and the Federal Railroad Administration violates separation of powers and due process, or if any constitutional deficiency can be cured by severing the statute’s arbitration clause.

[18-984](#) **King Mountain Tobacco Co. v. United States (9th Cir.)**
BIO 5/1. Reply 5/20. Dist. for 6/6.

**Indian Law:
Taxation**

On whether “the Ninth Circuit erred in holding that the Yakama Treaty must include ‘express exemptive language’ to create an exemption from a federal tax or fee,” among other issues.

[18-987](#) **McKesson Corp. v. True Health Chiropractic, Inc. (9th Cir.)**
CFR 3/13. BIO 5/21.

**Class Actions:
Class Certification**

On whether the burden at class certification shifts to the defendant when predominance turns on affirmative defenses.

[18-1000](#) **American Freedom Defense Initiative v. Washington Metropolitan Area Transit Authority (D.C. Cir.)**
CFR 2/25. BIO 4/26. Reply 5/6. Dist. for 5/30.

**First Amendment:
Speech**

On whether a government transit advertising space constitutes a public forum such that rejecting petitioner's "Support Free Speech" ads violates the First Amendment.

[18-1023](#) **Main Community Health Option v. United States (Fed. Cir.)**
[18-1028](#) **Moda Health Plan, Inc. v. United States (Fed. Cir.)**
[18-1038](#) **Land of Lincoln Mutual Health Insurance Co., an Illinois Nonprofit Mutual Insurance Corp. v. United States (Fed. Cir.)**
BIO 5/8.

**Appropriations:
Affordable Care Act**

On whether a temporary cap on appropriations from certain funding sources may be construed to retroactively abrogate the government's payment obligations "under a money-mandating statute," for parties that have already performed their part of the bargain under the statute, among other issues.

[18-1053](#) **Ashland Specialty Co., Inc. v. Steager, West Virginia State Tax Commissioner (W. Va.)**
CFR 3/15. BIO 5/15.

**Civil Penalties:
Proportionality**

On whether a state may impose a civil monetary penalty equal to 500% of the value of unlawfully sold cigarettes or if such a penalty is grossly disproportionate to the offense and therefore unconstitutional under the Excessive Fines Clause.

[18-1059](#) **Kelly v. United States (3d Cir.)**
BIO 5/15.

**Corruption:
Traffic Lanes**

On whether "a public official 'defraud[s]' the government of property by advancing a 'public policy reason' for an official decision that is not her subjective 'real reason' for making the decision."

[18-1062](#) **Love Terminal Partners, L.P. v. United States (Fed. Cir.)**
BIO 5/15.

**Takings Clause:
Value**

On whether the court of appeals erred in relying on current cashflow to find a property was worthless at the time the government effected a taking, among other issues.

[18-1065](#) *Interpipe Contracting, Inc. v. Becerra, Attorney General of California* (9th Cir.)

**First Amendment:
Unions**

[18-1092](#) *Associated Builders & Contractors of California Cooperation Committee, Inc. v. Becerra, Attorney General of California* (9th Cir.)
CFR 3/19. BIO 5/20.

On whether the court below correctly held that a state statute requiring employee consent—through a collective bargaining agreement—before employers contribute portions of their wages to third-party advocacy groups is rationally related to a legitimate government purpose, among other issues.

[18-1070](#) *Village of Lincolnshire, Illinois v. International Union of Operating Engineers Local 399* (7th Cir.)

**NLRA:
State Law**

BIO 5/2. Reply 5/20. Dist. for 6/6.

On whether a law enacted by a state’s political subdivision constitute a state law under section 14(b) of the National Labor Relations Act.

[18-1083](#) *Garda CL Northwest, Inc., fka AT Systems, Inc. v. Hill* (Wash.)

**Preemption:
Wage-and-Hour Laws**

BIO 4/24. Reply 5/8. Dist. for 5/30.

Scott Nelson of Public Citizen is co-counsel for respondent.

[Brief in Opposition](#)

On whether “any issue of preemption under the National Labor Relations Act is presented by the Washington Supreme Court’s adoption of a standard based on federal law for determining whether a collective bargaining agreement waives rights under state wage-and-hour laws,” among other issues.

[18-1097](#) *SkyWest, Inc. v. Hirst* (7th Cir.)

**Commerce Clause:
Wage-and-Hour Laws**

BIO 4/24. Reply 5/13.

On whether the “dormant commerce clause permits airlines to ignore state and local wage and hour regulations.”

[18-1109](#) *McKinney v. Arizona* (Ariz.)

**Criminal Law:
Death Penalty**

BIO 4/25. Reply 5/9. Dist. for 5/30.

On whether the correction of error under *Eddings v. Oklahoma* (1982) requires resentencing, among other issues.

[18-1116](#) *Intel Corp. Investment Policy Committee v. Sulyma* (9th Cir.)

**ERISA:
Actual Knowledge**

BIO 4/29. Reply 5/14. Dist. for 5/30.

On whether ERISA’s “actual knowledge” exception requires a plaintiff to have actual knowledge both that those investments occurred, and that they were imprudent or if the exception is instead triggered by a plaintiff’s constructive knowledge that the investments occurred.

18-1120 Riffe v. Pritzker, Governor of Illinois (7th Cir.)
CFR 4/9. BIO 5/20.

**First Amendment:
Unions**

On whether, to establish a First Amendment injury and damages, individuals who object to having paid union fees must prove contemporaneous subjective opposition to that union.

18-1122 Alpenglow Botanicals, LLC v. United States (10th Cir.)
CFR 3/20. BIO 5/20.

**Federal Investigations:
Marijuana**

On whether civil auditors from the IRS may investigate federal drug law crimes and administratively determine whether a taxpayer is criminally culpable under those laws, among other issues.

18-1132 Smith v. Mays, Warden (6th Cir.)
BIO 5/1. Reply 5/21. Dist. for 6/6.

**Criminal Law:
Habeas Relief**

On whether a federal habeas petition may introduce evidence outside the state record to prove ineffective assistance of trial counsel claims that were ineffectively raised in state habeas proceedings.

**18-1137 Les Schwab Tire Centers of Portland, Inc. v. Wilcox, Individually
& as the Personal Representative of the Estate of Jenna Wilcox (Or.)**
BIO 5/3. Reply 5/17. Dist. for 6/6.

**Military Service:
SCRA**

On whether the Oregon intermediate court correctly ruled that the Servicemembers Civil Relief Act tolls the statute of limitations “because, under Oregon law, this wrongful death action is brought for the benefit of respondent.”

**18-1145 Minerva Dairy, Inc. v. Pfaff, in his Official Capacity as
Secretary-designee of the Wisconsin Department of Agriculture (7th Cir.)**
BIO 5/20.

**Commerce Clause:
Quality Standards**

On whether, to establish a dormant commerce clause violation, a plaintiff must allege that the challenged law discriminates against out-of-state commerce or that the law’s burdens on interstate commerce plainly outweigh the putative local benefits, as related to quality standards imposed on a commodity.

**18-1151 St. Augustine School v. Taylor, in Her Official Capacity
as Superintendent of Public Instruction (7th Cir.)**
BIO 4/5.

**First Amendment:
Religion Clauses**

On whether denying school transportation aid to a self-identified Catholic school under a statute that precludes two schools affiliated with the same organization from having overlapping attendance areas violates free exercise, among other issues.

18-1156 Morgenthau Venture Partners, LLC v. Kimmel (Fla. Ct. App.)
BIO 5/6. Reply 5/21. Dist. for 6/6.

**Arbitration:
Waiver**

Adam Pulver of Public Citizen is co-counsel for respondent.
Brief in Opposition

On whether the state courts below correctly concluded that respondent's amendment of his complaint did not resuscitate petitioners' previously waived right to compel arbitration, among other issues.

**18-1160 Teck Metals Ltd., fka Teck Cominco Metals, Ltd. v.
The Confederated Tribes of the Colville Reservation (9th Cir.)**
BIOs 5/6. Reply 5/20. Dist. for 6/6.

**Environmental Regulation:
CERCLA**

On whether CERCLA is in fact being applied domestically to the release of hazardous substances from a facility located wholly within the United States, among other issues.

**18-1177 Peters, as Executor of the Estate of McKelvey, Deceased
v. Commissioner of Internal Revenue (2d Cir.)**
BIO 5/9.

**Administrative Procedure:
Rulemaking**

On whether the judiciary may enforce an ambiguous Internal Revenue Code provision by filling a statutory gap where Congress delegated gap-filling responsibility to the Treasury Department, which has not promulgated regulations.

**18-1192 The Little Sisters of the Poor Jeanne Jugan Residence
v. California (9th Cir.)**
BIO 5/13.

**RFRA:
Contraceptive Coverage**

On whether the Religious Freedom Restoration Act requires the government to exempt religious objectors from providing health plans that include contraceptive coverage.

18-1195 Espinoza v. Montana Department of Revenue (Mont.)
BIO 5/15.

**First Amendment:
Religion Clauses**

On whether the Free Exercise Clause or Equal Protection Clause requires a state to aid private religious education where the state provides no similar aid to private nonreligious education and despite a state constitutional provision prohibiting such aid.

18-1257 Lee v. City of Los Angeles (9th Cir.)
BIO 4/30. Reply 5/14. Dist. for 5/30.

**Voting Rights:
Racial Gerrymandering**

On whether legislative privilege asserted by state and local officials can prevent discovery related to a claim that a city council racially gerrymandered new district boundaries, among other issues.

18-1272 Gould v. Morgan (1st Cir.)
BIOs 5/6. Reply 5/20. Dist. for 6/6.

**Second Amendment:
Licensing Restrictions**

On whether two municipalities public-carry licensing regimes, which allow restricted licenses for many discrete purposes and unrestricted licenses for those with good reason to fear injury to themselves or their property, are consistent with the Second Amendment.

18-1279 Lewis v. Pension Benefit Guaranty Corp. (D.C. Cir.)
BIO 5/8.

**ERISA:
Fiduciary Duties**

On whether Title IV of ERISA precludes disgorgement of profits from a corporation as an appropriate equitable remedy for the corporation's breaches of fiduciary duties.

18-1318 Marquette Transportation Co., LLC v. Dunn (5th Cir.)
BIO 5/20.

**Maritime Law:
Primary Duty Doctrine**

On whether the primary duty doctrine still exists as a defense in Jones Act cases, among other issues.

CALLS FOR RESPONSE

NEW CFR

[18-1395 Fraternal Order of Police Chicago Lodge No. 7 v. Illinois \(7th Cir.\)](#) **Civil Procedure:**
CFR 5/17. Due 6/17. **Intervention**

On whether a motion to intervene is timely when filed shortly after the proposed intervenor learns that the existing parties misrepresented that the proposed intervenor's rights would not be affected, among other issues.

PENDING CFR

[18-893 West Virginia House of Delegates v. West Virginia ex rel. Workman \(W.Va.\)](#) **Guarantee Clause:**
CFR 4/24. Due 5/24. **Judicial Impeachment**

On whether the West Virginia Supreme Court of Appeals' ruling invalidating impeachment proceedings against its own Chief Justice violated the Guarantee Clause, among other issues.

[18-1111 Kaufman v. Walker \(Wis. Ct. App.\)](#) **Fourth Amendment:**
CFR 4/18. Due 5/20. Ext. 6/19. **GPS Monitoring**

On whether it was error to hold that "lifetime GPS monitoring of sex offenders, based on decades old convictions, and on the assertion that the offender 'might' commit another crime at some unspecified future date, was reasonable under the Fourth Amendment," among other issues.

[18-1044 PharMerica Corp. v. United States ex rel. Silver \(3d Cir.\)](#) **False Claims Act:**
CFR 3/27. Due 5/3. Ext. 6/3. **Public Disclosure**

On whether a relator's admission that he derived his complaint from public disclosures requires inquiry into whether such a relator is an original source of the information in the complaint, among other issues.

[18-1154 Integrity Staffing Solutions, Inc. v. Busk \(6th Cir.\)](#) **FLSA:**
CFR 4/24. Due 5/24. **Definition of Work**

On whether the Portal-to-Portal Act modified the Fair Labor Standards Act's pre-1947 definition of "work," among other issues.

[18-1067 Ambac Assurance Corp. v. U.S. Bank National Ass'n \(Minn. Ct. App.\)](#) **Jurisdiction:**
CFR 3/21. Due 4/22. Ext. 5/22. **In rem**

On whether a court may exercise *in rem* jurisdiction over a trust where the only basis for jurisdiction is the trustee's presence in the forum.

18-1074 Perryman v. Romero (9th Cir.)
CFR 4/23. Due 5/23. Due 5/31.

**Class Actions:
Cy Pres**

On whether a *cy pres* award that indirectly benefits class members comports with Rule 23(e), which requires that a settlement binding class members be “fair, reasonable, and adequate.”

18-1140 Avco Corp. V. Sikkelee, Individually & as Personal Representative of the Estate of David Sikkelee, Deceased (3d Cir.)
CFR 3/21. Due 4/22. Ext. 5/22.

**Preemption:
Air Travel Regulation**

On whether the Federal Aviation Act preempts state-law design-defect claims.

18-1162 Swaney v. Lopez (9th Cir.)
CFR 5/7. Due 6/6.

**Qualified Immunity:
Clearly Established Law**

On whether the court below correctly affirmed denial of qualified immunity to corrections officers where there was evidence that the officers were deliberately indifferent in denying medical care to inmates suffering a serious medical emergency.

18-1166 Sievers v. Nebraska (Neb.)
CFR 4/18. Due 5/20.

**Fourth Amendment:
Searches**

On whether a police officer may “stop a criminal suspect in the absence of reasonable suspicion on the ground that the stop is merely ‘information-seeking.’”

18-1182 Ogle v. Texas (Tex. Crim. App.)
CFR 4/22. Due 5/22. Ext. 6/21.

**First Amendment:
Speech**

On whether a statute that criminalizes “electronically communicated speech that is both intended and reasonably likely to annoy, alarm, or embarrass another person prohibit a substantial amount of protected speech in relation to the statute’s legitimate sweep” and so violate the First Amendment.

18-1189 Carmichael, President of the West Virginia Senate v. West Virginia ex rel. Workman (W. Va.)
CFR 4/24. Due 5/24.

**Guarantee Clause:
Judicial Impeachment**

On whether the West Virginia Supreme Court of Appeals’ ruling invalidating impeachment proceedings against its own Chief Justice violated the Guarantee Clause, among other issues.

18-1203 Courthouse News Service v. Brown, Clerk, Circuit Court of Illinois, Cook County (7th Cir.)
CFR 4/24. Due 5/24.

Jurisdiction:
Younger Abstention

On whether the *Younger v. Harris* (1971) doctrine “permits federal courts to abstain, on the basis of general principles of comity and federalism, from hearing First Amendment challenges that seek access to state court filings.”

18-1207 In re Twelve Grand Jury Subpoenas (9th Cir.)
CFR 4/9. Due 5/9. Ext. 6/10.

Fifth Amendment:
Records Custodians

On whether *Braswell v. United States* (1988), which held that a business entity’s records custodian cannot assert the Fifth Amendment to avoid a government-issued subpoena duces tecum, should be limited or overturned, among other issues.

18-1210 Chronister, Sheriff, Hillsborough County, Florida v. Freyre (11th Cir.)
CFR 5/7. Due 6/6.

Jurisdiction:
Eleventh Amendment

On whether the Eleventh Circuit erred when it found that the Hillsborough County Sheriff’s Office did not act as an arm of the state when conducting child protective investigations and so was not entitled to immunity under the Eleventh Amendment, among other issues.

18-1240 Kerpen v. Metropolitan Washington Airports Authority (4th Cir.)
CFR 5/7. Due 6/6.

Guarantee Clause:
Delegation

On whether Congress may delegate to interstate compacts and other instrumentalities of state or local governments powers that could not constitutionally be delegated to private entities, among other issues.

18-1245 Oglala Sioux Tribe v. Fleming, in Her Official Capacity (8th Cir.)
CFR 5/8. Due 6/7.

Jurisdiction:
Younger Abstention

On whether the court of appeals erred in holding that the “extraordinary circumstances” exception to *Younger v. Harris* (1971) abstention applies to flagrantly and patently unconstitutional statutes, but not to flagrantly and patently unconstitutional polices, and in concluding that separating children from their parents for sixty days with no notice or opportunity to be heard inflicted no irreparable harm, among other issues.

18-1258 Enclarity Inc. v. Fulton (6th Cir.)
CFR 5/14. Due 6/13.

TCPA:
Definition of Advertisement

On whether faxes that request information but propose no commercial transaction with recipients are “advertisements” under the Telephone Consumer Protection Act.

On whether the Eighth Amendment requires a sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing life without parole.

[18-1265 September Ends Co. v. Pension Benefit Guaranty Corp. \(6th Cir.\)](#)
CFR 5/8. Due 6/7. Due 7/5.

ERISA:
Successor Liability

On whether the court below applied an improper standard for successor liability for unpaid ERISA pension obligations.

[18-1267 Leeman v. Arizona \(Ariz. Ct. App.\)](#)
CFR 4/30. Due 5/30.

Criminal Law:
Juvenile LWOP

On whether *Graham v. Florida* (2010) “applies with equal force to consecutive sentences for non-homicide offenses that work in the aggregate to foreclose the possibility of parole during a juvenile’s lifetime as it does to ‘life without parole’ sentences,” among other issues.

[18-1276 Levert v. United States \(11th Cir.\)](#)
CFR 5/6. Due 6/5.

Criminal Law:
Habeas Relief

On whether a defendant pursuing a second or successive habeas petition is entitled to relief under a retroactive constitutional decision invalidating a federal statutory provision, where the record is silent as to whether the district court based its original judgment on that provision or on another provision of the statute.

[18-1287 Baxter v. Bracey \(6th Cir.\)](#)
CFR 5/1. Due 5/31.

Qualified Immunity:
Clearly Established Law

On whether binding authority holding that a police officer violates the Fourth Amendment when he uses a police dog to apprehend a suspect who has surrendered by lying on the ground clearly establish that it is likewise unconstitutional to use a police dog on a suspect who has surrendered by sitting on the ground with his hands up, among other issues.

[18-1299 Gillispie v. Regionalcare Hospital Partners, Inc. \(3d Cir.\)](#)
CFR 5/10. Due 6/10.

EMTALA:
Whistleblower Protection

On whether the court below erred when it interpreted the anti-retaliation whistleblower provision of the Emergency Medical Treatment and Active Labor Act to include a definition of the word “report” that would require whistleblowers to provide previously unknown information.

CALLS FOR THE VIEWS OF THE SOLICITOR GENERAL

PENDING CVSG

[17-1236](#) **Republic of Sudan v. Owens (D.C. Cir.)**
[17-1268](#) **Opati v. Republic of Sudan (D.C. Cir.)**
[17-1406](#) **Republic of Sudan v. Opati (D.C. Cir.)**

**Foreign Sovereign Immunities Act:
Burden of Proof**

BIOs 4/9, 5/7, 5/8. Replies 5/8, 5/22. Dist. for 6/7. CVSG 6/11.

On whether, when suing a foreign state, plaintiffs bear a lighter burden in establishing facts necessary for jurisdiction than they do in proving a merits case, among other related issues.

[17-1529](#) **Clearstream Banking S.A. v. Peterson (2d Cir.)**
[17-1530](#) **Banca UBAE, S.p.A. v. Peterson (2d Cir.)**
[17-1534](#) **Bank Markazi v. Peterson (2d Cir.)**

**Foreign Sovereign Immunities Act:
Property Abroad**

BIO 7/11. Reply 7/24. Dist. for 9/24. CVSG 10/1.

On whether the Foreign Sovereign Immunities Act affords execution immunity only to property located in the United States.

[17-1712](#) **Thole v. U.S. Bank, N.A. (8th Cir.)**
BIO 8/22. Reply 9/5. Dist. for 9/24. CVSG 10/1.

**ERISA:
Fiduciary Duties**

On whether an ERISA plan participant or beneficiary may seek injunctive relief against or restoration of plan losses caused by fiduciary misconduct “without demonstrating individual financial loss or the imminent risk thereof.”

[18-349](#) **Patterson v. Walgreen Co. (11th Cir.)**
CFR 10/29. BIO 1/14. Reply 1/29. Dist. for 3/1. Dist. for 3/15. CVSG 3/18.

**Discrimination:
Accommodations**

On whether an employee’s religious beliefs can be reasonably accommodated by offering an accommodation that reduces the conflict between work and religious practice or if an accommodation must eliminate all conflict, among other issues.

[18-540](#) **Rutledge, Attorney General of Arkansas v. Pharmaceutical Care Management Ass’n (8th Cir.)**
BIO 2/28. Reply 3/18. Dist. for 4/12. CVSG 4/15.

**ERISA:
Drug Reimbursement**

On whether the court below erred in holding that ERISA preempts an Arkansas statute that, like many other state laws intended to curb abusive prescription drug reimbursement practices, regulates drug reimbursement rates for pharmacy benefit managers.

On whether, when plaintiffs show both fiduciary breach and an associated plan loss, the burden shifts to defendants to show the plan would have suffered the same loss absent the breach, among other issues.

HELD / AWAITING ACTION

17-1455 Jordan v. City of Darien (11th Cir.)

BIO 5/23. Supp. Pet. Br. 9/12. Dist. for 9/24.
(Likely held for 17-1174, *Nieves v. Bartlett*)

**First Amendment:
Retaliatory Arrest**

On whether the existence of probable cause defeats a First Amendment retaliatory arrest claim as a matter of law.

17-1511 Newton v. Indiana (Ind. Ct. App.)

BIO 8/3. Reply 8/17. Dist. for 12/7. Dist. for 1/4. Dist. for 1/11. Dist. for 1/18.
Dist. for 2/15. Dist. for 2/22. Dist. for 3/1. Dist. for 3/15.
(Likely held for 18-217, *Mathena, Warden v. Malvo*)

**Criminal Law:
Juvenile LWOP**

On whether *Miller v. Alabama* (2012) applies to discretionary life-without-parole sentences for juvenile offenders or is limited to mandatory life-without-parole sentences.

18-106 Turner v. United States (6th Cir.)

BIO 11/23. Reply 11/29. Dist. for 1/4.
(Likely held for 17-646, *Gamble v. United States*)

**Sixth Amendment:
Right to Counsel**

On whether the Sixth Amendment right to counsel attaches when the prosecutor conducts plea negotiations before filing a formal charge.

18-268 Kinder Morgan Energy Partners, L.P. v. Upstate Forever (4th Cir.)

BIO 10/23. Reply 11/6. Dist. for 11/30. CVSG 12/3. SG's Br. 1/4.
Supp. Pet. Br. 1/11. Supp. Resp. Br. 1/11. Dist. for 1/18. Dist. for 2/15.
(Likely held for 18-206, *County of Maui, Hawaii v. Hawaii Wildlife Fund*)

**Environmental Regulation:
Clean Water Act**

On whether the Clean Water Act's permitting requirements apply to pollutants that originate from a point source and are conveyed to navigable waters through groundwater, among other issues.

18-294 Hochariw v. County of Stanislaus, California (9th Cir.)

CFR 10/10. BIO 11/16. Reply 12/3. Dist. for 1/4.
(Likely held for 17-647, *Knick v. Township of Scott, Pennsylvania*)

**Takings Clause:
Ripeness**

On whether takings and due process claims arising from a subdivision disapproval ripen upon disapproval of an initial application or upon a final, definitive determination of permitted use of property.

18-351 City of Pensacola, Florida v. Kondrat'yev (11th Cir.)

BIO 11/19. Reply 11/21. Dist. for 12/7.

(Likely held for 17-1717, *American Legion v. American Humanist Ass'n*)

**First Amendment:
Religion Clauses**

On whether plaintiffs have standing to sue under the Establishment Clause by alleging direct and unwelcome exposure to a religious display, among other issues.

18-587 Department of Homeland Security v. Regents of the University of California (9th Cir.)

18-588 Trump, President of the United States v. National Ass'n for the Advancement of Colored People (D.C. Cir.)

18-589 Nielsen, Secretary of Homeland Security v. Vidal (2d Cir.)

BIOS 12/17. Reply 1/4. Dist. for 1/11. Dist. for 1/18.

**Immigration:
DACA**

On whether the district courts erred in holding that the Department of Homeland Security's rescission of the Deferred Action for Childhood Arrivals program is subject to judicial review.

18-593 StarLink Logistics, Inc. v. ACC, LCC (Tenn. Ct. App.)

BIOS 2/6. Reply 2/19. Dist. for 3/15.

(Likely held for 18-206, *County of Maui, Hawaii v. Hawaii Wildlife Fund*)

**Environmental Regulation:
Clean Water Act**

On whether the Clean Water Act preempts a state law authorizing the discharge of pollutants—without obtaining a permit—from a point source into navigable waters in concentrations that exceed effluent limits.

18-663 Mance v. Barr, Attorney General (5th Cir.)

BIO 2/21. Reply 3/11. Dist. for 4/12.

(Likely held for 18-280, *New York State Rifle & Pistol Ass'n, Inc. v. City of New York, New York*)

**Second Amendment:
Licensing Restrictions**

On whether it is consistent with the Second Amendment to prohibit federally licensed firearms dealers from directly selling handguns to non-residents of the state where the dealer's business is located.

18-664 Bauerly, Commissioner, Minnesota Department of Revenue v. Fielding, Trustee of the Reid & Ann MacDonald Irrevocable GST Trust for Maria MacDonald (Minn.)

BIO 1/22. Reply 2/4. Dist. for 2/22.

(Likely held for 18-457, *North Carolina Department of Revenue v. Kaestner Family Trust*)

**Due Process:
Trust Taxation**

On whether a state law that imposes income taxes on "resident trusts" because they are administered by an out-of-state trustee violates due process.

18-762 Pina v. United States (6th Cir.)

BIO 3/7. Reply 3/19. Dist. for 4/12.
(Likely held for 17-646, *Gamble v. United States*)

**Sixth Amendment:
Right to Counsel**

On whether the Sixth Amendment right to counsel attaches when federal authorities are pursuing an indictment but have yet to file a formal federal charge, among other issues.

18-821 Wills v. United States (5th Cir.)

Resp. Memo 2/13. Dist. for 3/1.
(Likely held for 17-646, *Gamble v. United States*)

**Fifth Amendment:
Double Jeopardy Clause**

On whether the dual sovereignty exception to the Fifth Amendment Double Jeopardy Clause should be overruled.

18-832 Petersen v. NCL (Bahamas) Ltd., dba Norwegian Cruise Line (11th Cir.)

CFR 2/21. BIO 3/25. Reply 4/5. Dist. for 4/26.
(Likely held for 18-266, *Dutra Group v. Batterton*)

**Maritime Law:
Damages**

On whether personal injury plaintiffs' spouses may recover for loss of consortium under maritime law.

18-843 Pena v. Horan, Director, California Department of Justice Bureau of Firearms (9th Cir.)

BIO 3/6. Reply 3/18. Dist. for 4/12.
(Likely held for 18-280, *New York State Rifle & Pistol Ass'n, Inc. v. City of New York, New York*)

**Second Amendment:
State Law**

On whether certain state law provisions requiring new semiautomatic handgun models manufactured or sold in the state to include certain safety features violate the Second Amendment.

18-954 Speelman v. Ohio (Ohio Ct. App.)

CFR 2/11. BIO 4/12. Supp. Pet. Br. 4/22. Dist. for 5/16.
(Likely held for 18-6210, *Mitchell v. Wisconsin*)

**Fourth Amendment:
Searches**

On whether the Fourth Amendment requires a search warrant, exception to the warrant requirement, or actual consent to draw blood from an unconscious person, among other issues.

18-1013 Winstead v. Johnson (7th Cir.)

CFR 2/21. BIO 3/26. Reply 4/8. Dist. for 5/16.
(Likely held for 18-485, *McDonough v. Smith*)

**Criminal Law:
Claim Accrual**

On whether, under *Heck v. Humphrey* (1994), claims based on *Miranda* violations accrue when the statements are admitted at trial or after reversal of the conviction.

18-1093 City of Joliet, Illinois v. Manuel (7th Cir.)

BIO 3/22. Reply 4/10. Dist. for 4/26.

(Likely held for 18-485, *McDonough v. Smith*)

**Criminal Law:
Claim Accrual**

On whether a Fourth Amendment claim brought under § 1983 for unlawful pretrial detention is subject to a rule of delayed accrual or if it accrues when the injury occurs.

18-1134 Virginia House of Delegates v. Bethune-Hill (E.D. Va.)

Mots. to Dismiss 4/1. Resp. Br. 4/15. Dist. for 5/9.

(Likely held for 18-281, *Virginia House of Delegates v. Bethune-Hill*)

**Voting Rights:
Racial Gerrymandering**

On whether the three-judge panel abused its discretion by adopting a remedial districting plan when the Commonwealth of Virginia failed to do so and after the court had concluded that several districts were racially gerrymandered.

18-1186 Johnson v. Winstead (7th Cir.)

BIO 4/12. Dist. for 5/16.

(Likely held for 18-485, *McDonough v. Smith*)

**Criminal Law:
Claim Accrual**

On whether the statute of limitations for a § 1983 claim based on the use of an unconstitutional inculpatory statement at trial begin to run when criminal proceedings terminate in the defendant's favor.

18-1214 Ross, Secretary of Commerce v. California (9th Cir.)

BIOs 3/20, 4/5. Dist. for 5/16.

(Likely held for 18-966, *Department of Commerce v. New York*)

**Administrative Procedure:
The Census**

On whether the Secretary of Commerce's decision to add a citizenship question to the 2020 census violated the Administrative Procedure Act or the Enumeration Clause.

GRANTED CASES INVOLVING PUBLIC CITIZEN – 2018 TERM

17-290 Merck Sharp & Dohme Corp. v. Albrecht (3d Cir.)

Cert. granted 6/28. Arg. 1/7. Decided 5/20, 9-0 in favor of petitioner.

**Preemption:
Failure to Warn**

Public Citizen filed an amicus brief in support of respondents.

Amicus Brief

On whether the Third Circuit correctly concluded that petitioner was not entitled to summary judgment on its preemption defense, having failed to show beyond genuine dispute that the Food and Drug Administration would have rejected an adequate warning about atypical femoral fractures.

17-340 New Prime, Inc. v. Oliveira (1st Cir.)

Cert. granted 2/26. Arg. 10/3. Decided 1/15, 8-0 in favor of respondent.

**Arbitration:
Arbitrability**

Public Citizen filed an amicus brief in support of respondent.

Amicus Brief

On whether a dispute over applicability of the FAA’s section 1 exemption is an arbitrability issue that must be resolved in arbitration pursuant to a valid delegation clause, among other issues.

17-961 Frank v. Gaos (9th Cir.)

Cert. granted 4/30. Arg. 10/31. Order re Supp. Br. 11/6. Supp. Pet. Br. 11/29.
Supp. Resp. Br. 11/30. Supp. Replies 12/21.
Decided 3/20/19, 8-1 vacating and remanding on other grounds.

**Class Actions:
Cy Pres**

Public Citizen filed an amicus brief in support of respondent.

Amicus Brief

On whether, or in what circumstances, a class-action settlement that provides a cy pres award of class-action proceeds comports with the requirement that a settlement binding class members must be “fair, reasonable, and adequate.”

After argument, the Court ordered supplemental briefing on the question whether any named plaintiff has standing such that the federal courts have Article III jurisdiction over the dispute.

17-988 Lamps Plus, Inc. v. Varela (9th Cir.)

Cert. granted 4/30. Arg. 10/29. Decided 4/24, 5-4 in favor of petitioner.

**Arbitration:
Class Arbitration**

Scott Nelson of Public Citizen is co-counsel for respondent.

Brief in Opposition

On whether the court of appeals erred in construing the arbitration agreement at issue in this case to authorize class arbitration, among other issues.

17-1272 Henry Schein, Inc. v. Archer & White Sales, Inc.
Cert. granted 6/25. Argt. 10/29. Decided 1/8, 9–0 in favor of petitioner.

**Arbitration:
Arbitrability**

Public Citizen filed an amicus brief in support of respondent.

Amicus Brief

On whether the Federal Arbitration Act permits a court to decline to enforce an agreement delegating arbitrability questions to an arbitrator if the court concludes the arbitrability claim is “wholly groundless.”

17-1471 Home Depot, U.S.A. v. Jackson (4th Cir.)

Cert. granted 9/27. Argt. 1/15.

**Class Actions:
Removal**

Public Citizen was co-counsel for respondent at the petition stage.

Brief in Opposition

On whether the removal provision of the Class Action Fairness Act allows a party that is not a defendant to remove class counterclaims asserted by the defendant in a state-court action.

18-481 Food Marketing Institute v. Argus Leader Media (8th Cir.)

Cert. granted 1/11. Argt. 4/22.

**FOIA:
Exemption 4**

Public Citizen filed an amicus brief in support of respondent.

Amicus Brief

On whether the longstanding test for application of Freedom of Information Act exemption 4, which requires a showing that disclosure of requested records will cause the submitter substantial competitive harm, is proper, or whether exemption 4 covers all commercial or financial information that the submitter does not typically disclose to the public.