



**ALAN MORRISON SUPREME COURT ASSISTANCE PROJECT**

**CERT. PETITIONS OF PUBLIC INTEREST  
March 22, 2019**

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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. Past conference watch lists are available in the [Watch List Archives](#). For more information, contact Rylee Sommers-Flanagan, 2018–2019 Supreme Court Assistance Project Fellow, at (202) 588-7713 or [supremecourt@citizen.org](mailto:supremecourt@citizen.org).

## WATCH LIST CONTENTS

<b>Issue Index.</b> . . . . .	<b><u>3</u></b>
<b>Resources.</b> . . . . .	<b><u>5</u></b>
Links for More Information. . . . .	<b><u>5</u></b>
Key Terms & Abbreviations. . . . .	<b><u>6</u></b>
<b>March 22 Conference</b> . . . . .	<b><u>7</u></b>
<b>Pending for Upcoming Conferences</b> . . . . .	<b><u>10</u></b>
<b>Calls for Response.</b> . . . . .	<b><u>17</u></b>
New CFR. . . . .	<b><u>17</u></b>
<b>Calls for the Views of the Solicitor General.</b> . . . . .	<b><u>21</u></b>
New CVSG. . . . .	<b><u>21</u></b>
Pending CVSG. . . . .	<b><u>21</u></b>
<b>Held.</b> . . . . .	<b><u>24</u></b>
<b>Granted Cases Involving Public Citizen – 2018 Term</b> . . . . .	<b><u>27</u></b>

## ISSUE INDEX

### Abortion Bans

*Safe Medical Practices.* . . . . . [13](#)

### Administrative Procedure

*Reviewability.* . . . . . [12](#)

### Arbitration

*Arbitrability.* . . . . . [27](#), [28](#)

*Class Arbitration.* . . . . . [13](#), [25](#), [27](#)

*State Law.* . . . . . [19](#)

### Bankruptcy

*Appeals.* . . . . . [16](#), [19](#)

*Fraudulent Transfers.* . . . . . [24](#)

### Bivens Claims

*Cross-Border Shootings.* . . . . . [22](#)

### Civil Penalties

*Proportionality.* . . . . . [17](#)

*Remedial Injunctions.* . . . . . [12](#)

### Class Actions

*Class Certification.* . . . . . [10](#), [20](#)

*Cy Pres.* . . . . . [27](#)

*Removal.* . . . . . [28](#)

### Criminal Law

*Brady.* . . . . . [18](#)

*Death Penalty.* . . . . . [14](#), [16](#)

*Double Jeopardy Clause.* . . . . . [26](#)

*Habeas Relief.* . . . . . [10](#), [17](#), [19](#)

*Heck v. Humphrey.* . . . . . [20](#)

*Juvenile LWOP.* . . . . . [24](#)

*Restitution.* . . . . . [12](#)

### Discrimination

*Accommodations.* . . . . . [12](#), [21](#)

*Employment.* . . . . . [8](#)

*Gender Identity.* . . . . . [7](#), [8](#)

*Remedy.* . . . . . [18](#)

*Sexual Orientation.* . . . . . [7](#)

### Due Process

*Demolished Property.* . . . . . [20](#)

*Posting Bond.* . . . . . [11](#), [13](#), [18](#)

*Rational Basis Review.* . . . . . [7](#)

*Termination Procedures.* . . . . . [8](#)

*Trust Taxation.* . . . . . [26](#)

### Environmental Regulation

*CERCLA.* . . . . . [21](#)

*Clean Water Act.* . . . . . [11](#), [25](#)

### ERISA

*Drug Reimbursement.* . . . . . [10](#)

*Fiduciary Duties.* . . . . . [15](#), [22](#)

### Fair Debt Collection Practices Act

*Foreclosure Activity.* . . . . . [7](#), [9](#)

### False Claims Act

*Particularity.* . . . . . [19](#)

### Federalism

*Marijuana.* . . . . . [17](#)

### First Amendment

*Campaign Finance.* . . . . . [12](#), [15](#), [18](#)

*Defamation Claims.* . . . . . [11](#), [15](#)

*Religion Clauses.* . . . . . [8](#), [9](#), [25](#)

*Retaliatory Arrest.* . . . . . [24](#)

*Right to Petition.* . . . . . [12](#)

*Speech.* . . . . . [15](#), [20](#)

*Unions.* . . . . . [13](#), [15](#), [17](#), [18](#)

### Foreign Sovereign Immunities Act

*Burden of Proof.* . . . . . [21](#)

*Commercial Activity.* . . . . . [23](#)

*Criminal Proceedings.* . . . . . [9](#)

*Property Abroad.* . . . . . [22](#)

*Service of Process.* . . . . . [24](#)

*Terrorism Risk Insurance Act.* . . . . . [16](#)

### Fourth Amendment

*Reasonable Use of Force.* . . . . . [11](#)

*Searches.* . . . . . [8](#), [9](#), [19](#)

### Immigration

*DACA.* . . . . . [26](#)

### Indian Law

*Indian Gaming Regulatory Act.* . . . . . [15](#)

*Taxation.* . . . . . [19](#)

*Tribal Sovereign Immunity.* . . . . . [15](#), [20](#), [21](#)

### Jurisdiction

*Administrative Review.* . . . . . [11](#)

*Subject Matter Jurisdiction.* . . . . . [13](#)

**Maritime Law**

*Damages.* . . . . . [18](#)  
*Safe Berth Clause.* . . . . . [10](#)

**Military Service**

*Feres Doctrine.* . . . . . [10](#)

**Monell Liability**

*Final Policymakers.* . . . . . [8](#)

**National Labor Relations Act**

*Picketing.* . . . . . [11](#)

**Preemption**

*Airline Deregulation Act.* . . . . . [21](#)  
*Collective Bargaining.* . . . . . [10, 14](#)  
*Failure to Warn Claim.* . . . . . [27](#)  
*Federal Power Act.* . . . . . [14](#)  
*Railroads.* . . . . . [14](#)

**Second Amendment**

*Licensing Restrictions.* . . . . . [11, 18](#)  
*State Law.* . . . . . [13](#)

**Securities Litigation**

*Domestic Transaction.* . . . . . [22](#)  
*Loss Causation.* . . . . . [22](#)

**Sixth Amendment**

*Right to Counsel.* . . . . . [8, 12, 25](#)

**Standing**

*Data Breach.* . . . . . [7](#)

**State Sovereign Immunity**

*Nevada v. Hall.* . . . . . [24](#)

**Takings Clause**

*Ripeness.* . . . . . [25](#)

## Resources

### LINKS FOR MORE INFORMATION

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- ✓ **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:**  
<http://www.citizen.org/litigation/SupremeCourt>. 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

<b>Petition for Certiorari</b> <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.
<b>Petitioner</b>	The party who lost in the lower court and is asking the Supreme Court to review the lower court decision.
<b>Respondent</b>	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.
<b>BIO</b> <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.
<b>CFR</b> <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.
<b>Conference</b>	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 <a href="#">Supreme Court calendar</a> .
<b>CVSG</b> <i>Call for the Views of the Solicitor General</i>	Before deciding whether to hear a case, the Court sometimes invites the <a href="#">Solicitor General</a> 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 <a href="#">here</a> .
<b>Dist.</b> <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.
<b>GVR</b> <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.
<b>Held</b>	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.
<b>QP</b> <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.
<b>Vide</b>	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.

## MARCH 22 CONFERENCE

**17-1351 Greer v. Green Tree Servicing, LLC (9th Cir.)**  
BIO 5/29. Reply 6/4. Dist. for 6/21. Dist. for 6/27. Dist. for 3/22.

**Fair Debt Collection Practices Act:  
Foreclosure Activity**

On whether the Fair Debt Collection Practices Act applies to non-judicial foreclosure proceedings.

**17-1618 Bostock v. Clayton County (11th Cir.)**  
CFR 7/13. BIO 8/10. Reply 8/24. 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.

**Discrimination:  
Sexual Orientation**

On whether Title VII prohibits discrimination against an employee based on sexual orientation.

**17-1623 Altitude Express, Inc. v. Zarda (2d Cir.)**  
BIO 8/16. Reply 9/4. 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.

**Discrimination:  
Sexual Orientation**

On whether Title VII prohibits discrimination against an employee based on sexual orientation.

**18-107 R.G. & G.R. Harris Funeral Homes, Inc. v. Equal Employment  
Opportunity Commission (6th Cir.)**  
BIOs 10/24. Reply 11/6. 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.

**Discrimination:  
Gender Identity**

On whether the word “sex” in Title VII’s prohibition on discrimination because of sex includes gender identity and transgender status.

**18-225 Zappos.com, Inc. v. Stevens (9th Cir.)**  
BIO 11/6. Reply 11/19. Dist. for 12/7. Dist. for 3/22.

**Standing:  
Data Breach**

On whether individuals whose personal information is held in a company’s database breached by hackers have Article III standing to sue the company based on the breach.

**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.

**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.

**18-498 Maricopa County, Arizona v. United States (9th Cir.)**  
BIO 2/15. Reply 2/28. Dist. for 3/22.

**Monell Liability:  
Final Policymakers**

On whether Arizona sheriffs are final policymakers for law enforcement in their counties in light of Arizona's constitution, statutes, and case law, among other issues.

**18-533 Travis v. Exel, Inc. (11th Cir.)**  
BIOs 12/3, 2/22. Reply 3/6. Dist. for 3/22.

**Discrimination:  
Employment**

On whether attributing a manager's discriminatory conduct to the company is based on whether the manager was a part of "higher management" or if the manager acted in a "managerial capacity."

**18-547 Klein v. Oregon Bureau of Labor & Industries (Or. Ct. App.)**  
BIO 1/25. Reply 2/11. Dist. for 3/22.

**First Amendment:  
Religion Clauses**

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

**18-556 Kansas v. Glover (Kan.)**  
CFR 12/19. BIO 2/19. Reply 3/5. Dist. for 3/22.

**Fourth Amendment:  
Searches**

On whether, for purposes of an investigative stop, it is reasonable for an officer to suspect that the registered owner of a vehicle is the one driving the vehicle absent any information to the contrary.

**18-640 Acklin v. Alabama (Ala. Crim. Ct. App.)**  
BIO 2/15. Reply 3/1. Dist. for 3/22.

**Sixth Amendment:  
Right to Counsel**

On whether a criminal defendant is deprived of his right to conflict-free counsel when his lawyer is paid by a third party who threatens to withhold payment if the lawyer fails to conduct the defense in a manner that serves the third party's interests.

**18-657 Grimsrud v. Department of Transportation (Fed. Cir.)**  
BIO 2/21. Reply 3/4. Dist. for 3/22.

**Due Process:  
Termination Procedures**

On whether terminating an air traffic controller's employment following a positive drug test after denying his request for an aliquot of the sample to conduct DNA testing violated due process.

**18-658 Doe v. Boyertown Area School District (3d Cir.)**  
BIOs 1/18, 1/22. Reply 2/12. Dist. for 3/22.

**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.



**18-729 Maxwell & Morgan, P.C. v. McNair (9th Cir.)**  
BIO 2/6. Reply 2/15. Dist. for 3/22.

**Fair Debt Collection Practices Act:  
Foreclosure Activity**

On whether the Fair Debt Collection Practices Act applies to judicial foreclosure activity that includes the potential for a deficiency judgment.

**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.

**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.

**18-943 Fairfield County, Ohio v. Morgan (6th Cir.)**  
BIO 2/14. Reply 3/6. Dist. for 3/22.

**Fourth Amendment:  
Searches**

On whether a policy that requires officers, before initiating a knock-and-talk, to intrude on private curtilage to obtain a clear view of the residence's perimeter violates the Fourth Amendment.

**18-948 In Re Grand Jury Subpoena (D.C. Cir.)**  
BIO 2/21. Reply 2/27. Dist. for 3/22.

**Foreign Sovereign Immunities Act:  
Criminal Proceedings**

On whether the Foreign Sovereign Immunities Act confers blanket immunity on foreign-state-owned enterprises from all criminal proceedings in the United States, including proceedings to enforce a federal grand jury subpoena, among other issues.

## PENDING FOR UPCOMING CONFERENCES

**17-664 *Petróleo Brasileiro S.A. v. Universities Superannuation Scheme Ltd.* (2d Cir.)** **Class Actions:  
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.

**18-460 *Daniel, Individually & as Personal Representative of the Estate of Rebekah Daniel v. United States* (9th Cir.)** **Military Service:  
*Feres* Doctrine**  
CFR 11/28. BIO 2/27. Dist. for 3/29.

On whether the *Feres* doctrine bars service members from bringing medical malpractice claims under the Federal Tort Claims Act where medical treatment did not involve military exigencies, decisions, or considerations, and where the service member was not engaged in military duty at the time of injury or death.

**18-540 *Rutledge, Attorney General of Arkansas v. Pharmaceutical Care Management Ass'n* (8th Cir.)** **ERISA:  
Drug Reimbursement**  
BIO 2/28. Reply 3/18. Dist. for 4/12.

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

**18-543 *State Correctional Institution at Fayette v. Reeves* (3d Cir.)** **Criminal Law:  
Habeas Relief**  
CFR 12/17. BIO 2/15.

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.

**18-565 *CITGO Asphalt Refining Co. v. Frescati Shipping Co., Ltd.* (3d Cir.)** **Maritime Law:  
Safe Berth Clause**  
BIOs 3/4. Reply 3/19. Dist. for 4/12.

On whether under maritime law a safe berth clause in a voyage charter is a guarantee of a ship's safety or a duty of due diligence.

**18-579 *Alaska Airlines, Inc. v. Schurke* (9th Cir.)** **Preemption:  
Collective Bargaining**  
CFR 12/26. BIOs 2/25. Reply 3/13. Dist. for 3/29.

On whether the Railway Labor Act preempts a state law right to reschedule vacation leave for family medical purposes when the worker's underlying right is covered by a collective bargaining agreement.

**18-608 Capital Medical Center v. National Labor Relations Board (D.C. Cir.)**  
BIO 2/22. Reply 3/7. Dist. for 3/29.

**NLRA:  
Picketing**

On whether the National Labor Relations Board erred in concluding that a hospital violated the National Labor Relations Act when it attempted to prevent two off-duty employees from engaging in picketing related to ongoing collective-bargaining negotiations outside a non-emergency hospital entrance.

**18-609 Robertson v. United States (9th Cir.)**  
BIO 3/11.

**Environmental Regulation:  
Clean Water Act**

On whether the term “navigable waters” in the Clean Water Act is unconstitutionally vague as applied.

**18-663 Mance v. Barr, Attorney General (5th Cir.)**  
BIO 2/21. Reply 3/11. Dist. for 3/29.

**Second Amendment:  
Licensing Restrictions**

On whether the requiring that federal firearm licensees may only directly transfer handguns to residents of the state where the licensee’s place of business is located is consistent with the Second Amendment.

**18-672 City of Newport Beach, California v. Vos (9th Cir.)**  
CFR 1/9. BIO 3/11.

**Fourth Amendment:  
Reasonable Use of Force**

On whether the Americans with Disabilities Act requires that police accommodate mentally ill suspects’ needs in the course of arrest and whether assessing reasonable force includes assessing whether unreasonable police conduct created the need to use force, among other issues.

**18-694 Williams v. Merit Systems Protection Board (Fed. Cir.)**  
BIO 2/27. Reply 3/12. Dist. for 3/29.

**Jurisdiction:  
Administrative Review**

On whether, to satisfy the Merit Systems Protection Board’s jurisdictional mandate, an employee who has had consecutive appointments with the same agency is a preference-eligible employee who has maintained “current continuous service in the same or similar positions.”

**18-696 Center for Medical Progress v. Planned Parenthood Federation of America (9th Cir.)**  
CFR 1/9. BIO 2/22. Reply 3/7. Dist. for 3/29.

**First Amendment:  
Defamation Claims**

On whether the court below correctly affirmed the district court’s denial of petitioners’ anti-SLAPP motion, among other issues.

**18-709 Bentley v. Vooy (3d Cir.)**  
CFR 1/17. BIO 3/19.

**Due Process:  
Posting Bond**

On whether a statute that requires courts to order non-resident plaintiffs to post a bond for costs upon a defendant’s request burdens plaintiffs’ access to courts.

**[18-710](#) Demirayak v. City of New York, New York (2d Cir.)**  
CFR 1/15. BIOs 3/18.

**Discrimination:  
Accommodations**

On whether a public entity violates the ADA when it provides “alternative accessible accommodations” without showing that such accommodations afford meaningful access to a court facility, among other issues.

**[18-722](#) Soundboard Ass’n v. Federal Trade Commission (D.C. Cir.)**  
BIO 2/6. Reply 2/20.

**Administrative Procedure:  
Reviewability**

On whether petitioners have a right to judicial review of a Federal Trade Commission’s non-binding informal advisory opinion under the Administrative Procedure Act.

**[18-735](#) Maricopa County, Arizona v. Melendres (9th Cir.)**  
BIO 3/11.

**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.

**[18-755](#) Illinois Liberty PAC v. Madigan, Attorney General of Illinois (7th Cir.)**  
CFR 1/9. BIO 3/11.

**First Amendment:  
Campaign Finance**

On whether courts should apply strict scrutiny to political contribution limits, rather than the intermediate scrutiny, “closely drawn” test applied in *Buckley v. Valeo* (1976).

**[18-759](#) Sample v. United States (10th Cir.)**  
BIO 3/15.

**Criminal Law:  
Restitution**

On whether a district court may reduce a prison sentence, or impose a probationary term in lieu of imprisonment, to enable a defendant to earn income to pay restitution to his victims.

**[18-761](#) Dahne v. Richey (9th Cir.)**  
BIO 2/28. Reply 3/18. Dist. for 4/12.

**First Amendment:  
Right to Petition**

On whether a prison’s refusal to process an inmate’s properly filed administrative grievance because it contains language that the prison deems “unnecessary” or “inappropriate” violates the Petition Clause.

**[18-762](#) Pina v. United States (6th Cir.)**  
BIO 3/7. Reply 3/19. Dist. for 4/12.

**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.

**18-811 Jpay, Inc. v. Kobel (11th Cir.)**  
CFR 2/14. BIO 3/13.

**Arbitration:  
Class Arbitration**

On whether courts may assume parties intended to allow an arbitrator to decide if class arbitration is available when they agreed to submit arbitrability dispute to an arbitrator.

**18-814 Walker, Individually & on Behalf of All Others Similarly Situated  
v. City of Calhoun, Georgia (11th Cir.)**  
BIO 2/27. Reply 3/12. Dist. for 3/29.

**Due Process:  
Posting Bond**

On whether heightened scrutiny applies to a government policy that keeps individuals arrested for misdemeanor and traffic-offense in jail pretrial solely because they are unable to pay a small cash bond—in other words, because of their indigency.

**18-830 Township of Millburn, New Jersey v. Palardy (3d Cir.)**  
BIO 3/6. Reply 3/20. Dist. for 4/12.

**First Amendment:  
Unions**

On whether a public employee’s membership in a union is a matter of public concern under *Pickering v. Board of Education* (1968).

**18-837 Harris, in His Official Capacity as State Health Officer v. West  
Alabama’s Women’s Center (11th Cir.)**  
BIO 3/4. Reply 3/15. Dist. for 4/12.

**Abortion Bans:  
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 all proposed means for complying with the law are not feasible and would subject women to significant health risks.

**18-838 Kaseburg v. Port of Seattle (9th Cir.)**  
BIO 3/6. Reply 3/19. Dist. for 4/12.

**Jurisdiction:  
Subject Matter Jurisdiction**

On whether the court below had subject matter jurisdiction to decide that landowners whose properties abutted the rail corridor’s boundaries lacked standing to sue for declaratory judgment, among other issues.

**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.

**Second Amendment:  
State Law**

On whether certain state law provisions requiring new models of semiautomatic handguns manufactured or sold in the state to include certain safety features violate the Second Amendment by prohibiting the manufacture and sale of some handgun models that may be made or sold in other states.

**18-847 BNSF Railway Co. v. Nye, as Personal Representative of the Estate of Jeffrey Nye (Okla.)**  
CFR 1/24. BIO 3/19.

**Preemption:  
Railroads**

On whether a state tort claim for inadequate signalization is preempted when federal funds contributed to the state-wide project to install warning devices, including at the grade crossing at issue.

**18-852 Precythe v. Johnson (8th Cir.)**  
BIO 3/6. Reply 3/20. Dist. for 4/12.

**Criminal Law:  
Death Penalty**

On whether the court of appeals correctly held that respondent adequately pled an alternate execution method under the well-established notice pleading requirements.

**18-855 Allen, Secretary, Wisconsin Department of Workforce Development v. International Ass'n of Machinists District Ten (7th Cir.)**  
BIO 3/1. Reply 3/20. Dist. for 4/12.

**Preemption:  
Collective Bargaining**

On whether federal law prohibits states from allowing employees to terminate their authorization for checking off union dues from their paychecks.

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

**Preemption:  
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 over railroads.

**18-868 Electric Power Supply Ass'n v. Star (7th Cir.)**  
BIOs 3/11.

**Preemption:  
Federal Power Act**

On whether the Federal Power Act preempts only state subsidies that explicitly require a wholesale generator to sell output in FERC-approved auctions or also preempts state subsidies that subsidize generators that also sell their entire output via such auctions, but without an explicit requirement.

**18-879 Electric Power Supply Ass'n v. Rhodes (2d Cir.)**  
BIOs 3/11.

**Preemption:  
Federal Power Act**

On whether the Federal Power Act preempts only state subsidies that explicitly require a wholesale generator to sell output in FERC-approved auctions or also preempts state subsidies that subsidize generators that also sell their entire output via such auctions, but without an explicit requirement.

[18-894](#) **McNeal v. Navajo Nation (10th Cir.)**  
BIO 3/13.

**Indian Law:**  
**Indian Gaming Regulatory Act**

On whether the Indian Gaming Regulatory Act precludes New Mexico from requiring that their gaming compact with the Navajo Nation allocate jurisdiction over a tort suit based on a slip-and-fall in a casino.

[18-896](#) **Missouri Ethics Commission v. Free & Fair Election Fund (8th Cir.)**  
CFR 2/13. BIOs 3/15.

**First Amendment:**  
**Campaign Finance**

On whether the First Amendment allows states to prohibit political action committees from transferring money to other political action committees.

[18-899](#) **Saint Regis Mohawk Tribe v. Mylan Pharmaceuticals, Inc.**  
(Fed. Cir.)  
BIO 3/6. Reply 3/18. Dist. for 4/12.

**Indian Law:**  
**Tribal Sovereign Immunity**

On whether *inter partes* review before the Patent Trial and Appeal Board is the type of proceeding in which tribal sovereign immunity may be asserted.

[18-926](#) **Putnam Investments, LLC v. Brotherston, Individually & on Behalf of All Others Similarly Situated (1st Cir.)**  
BIO 3/14.

**ERISA:**  
**Fiduciary Duties**

On whether, when plaintiffs present proof of 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.

[18-932](#) **Osburn v. Loeb (9th Cir.)**  
BIO 3/15.

**First Amendment:**  
**Unions**

On whether the court below erred in affirming the grant of summary judgment on free speech and assembly claims brought under the Labor Management Reporting and Disclosure Act, among other issues.

[18-949](#) **Knox v. Pennsylvania (Penn.)**  
CFR 2/4. BIO 3/6. Reply 3/12. Dist. for 4/12.

**First Amendment:**  
**Speech**

On whether showing a threat is unprotected by the First Amendment requires showing that a reasonable person would perceive the statement as a violent threat or if subjective intent to threaten is enough.

[18-964](#) **Father John Gallagher v. Diocese of Palm Beach, Inc. (Fla. Ct. App.)**  
BIO 3/14.

**First Amendment:**  
**Defamation Claims**

On whether a priest may bring a defamation claim against a church for statements published outside of the church.

**[18-974](#) Mar-Bow Value Partners, LLC v. McKinsey Recovery & Transformation Services US LLC (4th Cir.)**  
BIO 3/19.

**Bankruptcy:  
Appeals**

On whether it was error to preclude petitioner from appealing because it lacked a pecuniary interest in the outcome and could not meet the prudential “persons aggrieved” test for bankruptcy appellate standing.

**[18-1039](#) Levin v. JPMorgan Chase Bank, N.A. (2d Cir.)**  
BIO 3/11.

**Foreign Sovereign Immunities Act:  
Terrorism Risk Insurance Act**

On whether blocked wire transfers, transferred into the United States by agents of Iran and used to benefit its financial interests, are immune from recovery by victims of terrorism when the agent immediately sending the wire transfer is not itself an Iranian owned bank entity.

**[18-1077](#) Jahi aka Carter v. Tennessee (Tenn. Crim. App.)**  
BIO 3/20.

**Criminal Law:  
Death Penalty**

On whether two cases that substantively develop the rule that intellectually disabled individuals are constitutionally ineligible for the death penalty—*Hall v. Florida* (2014) and *Moore v. Texas* (2017)—apply retroactively to cases on collateral review.



## CALLS FOR RESPONSE

### NEW CFR

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**[18-1053](#) Ashland Specialty Co., Inc. v. Steager, West Virginia State Tax Commissioner (W.V.)**  
CFR 3/15. Due 4/15.

**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.

**[18-1065](#) Interpipe Contracting, Inc. v. Becerra, Attorney General of California (9th Cir.)**  
**[18-1092](#) Associated Builders & Contractors of California Cooperation Committee, Inc. v. Becerra, Attorney General of California (9th Cir.)**  
CFR 3/19. Due 4/18.

**First Amendment:  
Unions**

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.

**[18-1122](#) Alpenglow Botanicals, LLC v. United States (10th Cir.)**  
CFR 3/20. Due 4/19.

**Federalism:  
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.

### PENDING CFR

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**[18-673](#) Prince v. Lizarraga, Warden (9th Cir.)**  
CFR 1/7. Due 2/6. Ext. 3/8. Ext. 4/8.

**Criminal Law:  
Habeas Relief**

On whether a second-in-time habeas petition that brings a *Brady* claim is, under AEDPA’s gatekeeping provision, “second or successive” when based on previously undisclosed evidence, among other issues.

**[18-719](#) Uradnik v. Inter Faculty Organization (8th Cir.)**  
CFR 1/25. Due 2/25. Ext. 3/27.

**First Amendment:  
Unions**

On whether appointing a labor union to represent and speak for public-sector employees who have declined to join the union violates the First Amendment.

**18-733 1A Auto, Inc. v. Sullivan, Director, Massachusetts Office of Campaign and Political Finance (Mass.)**      **First Amendment:  
Campaign Finance**  
CFR 1/30. Due 3/1. Ext. 4/30.

On whether barring corporations from contributing to political candidates or campaigns without also barring other entities such as unions and non-profits violates the First Amendment and equal protection.

**18-766 Bierman v. Walz, Governor of Minnesota (8th Cir.)**      **First Amendment:  
Unions**  
CFR 2/1. Due 3/4. Ext. 4/3.

On whether designating a representative to speak for individual Medicaid providers when engaging in conversations with the state over certain public policies violates the First Amendment.

**18-781 Baltimore County, Maryland v. Equal Employment Opportunity Commission (4th Cir.)**      **Discrimination:  
Remedy**  
CFR 2/6. Due 3/8. Ext. 4/8.

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.

**18-809 Lovelace v. Illinois (Ill. Ct. App.)**      **Due Process:  
Posting Bond**  
CFR 2/8. Due 3/11. Ext. 4/10.

On whether charging an acquitted person a \$35,000 bail bond forfeiture, related not to individualized costs or compliance with bail conditions, but to fund the clerk of court, violates due process, excessive fines, and equal protection.

**18-824 Rogers v. Grewal, Attorney General of New Jersey (3d Cir.)**      **Second Amendment:  
Licensing Restrictions**  
CFR 2/19. Due 3/21. Ext. 4/19.

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.

**18-832 Peterson v. NCL (Bahamas) Ltd., dba Norwegian Cruise Line (11th Cir.)**      **Maritime Law:  
Damages**  
CFR 2/21. Due 3/25.

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

**18-854 Alvarez v. City of Brownsville, Texas (5th Cir.)**      **Criminal Law:  
*Brady***  
CFR 1/31. Due 3/4. Ext. 4/4.

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.

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

**Indian Law:**

**18-895 The Miccosukee Tribe of Indians v. United States (11th Cir.)**

**Taxation**

CFR 2/19. Due 3/21. Ext. 4/22.

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.

**18-911 Intermountain Health Care, Inc. v. United States, ex rel. Polukoff (10th Cir.)**

**False Claims Act:  
Particularity**

CFR 2/21. Due 3/25.

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.

**18-929 Marcus & Millichap Real Estate Investment Services, Inc. v. Weiler (Cal. Ct. App.)**

**Arbitration:  
State Law**

CFR 2/27. Due 3/29. Ext. 4/29.

On whether the Federal Arbitration Act prevents arbitrators from relying on a state rule to order a case back into court to determine whether a plaintiffs' financial circumstances render her unable to pursue relief in the arbitral forum.

**18-938 Ritzen Group, Inc. v. Jackson Masonry, LLC (6th Cir.)**

**Bankruptcy:  
Appeals**

CFR 3/13. Due 4/12.

On whether an order denying a motion for relief from the automatic stay is always a final order under the Bankruptcy Code, 28 U.S.C. § 158(a)(1).

**18-940 Hancock v. Davis, Director, Texas Department of Criminal Justice, Correctional Institutions Division (5th Cir.)**

**Criminal Law:  
Habeas Relief**

CFR 2/21. Due 3/25. Ext. 4/24.

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 petition for habeas corpus.

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

**Fourth Amendment:  
Searches**

CFR 2/11. Due 3/13. Ext. 4/12.

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.

[18-963 Hill v. City of Jackson, Michigan \(6th Cir.\)](#)  
CFR 2/27. Due 3/29. Ext. 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. Due 4/4.

**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.

[18-987 McKesson Corp. v. True Health Chiropractic, Inc. \(9th Cir.\)](#)  
CFR 3/13. Due 4/12.

**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. Due 3/27. Ext. 4/26.

**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.

[18-1013 Winstead v. Johnson \(7th Cir.\)](#)  
CFR 2/21. Due 3/25.

**Criminal Law:**  
***Heck v. Humphrey***

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.

**CALLS FOR THE VIEWS OF THE SOLICITOR GENERAL**

NEW CVSG

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**[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.

PENDING CVSG

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**[17-1175](#) *Poarch Band of Creek Indians v. Wilkes* (Ala.)**

CFR 4/5. BIO 6/8. Reply 6/27. Dist. for 9/24. CVSG 10/1.

**Indian Law:  
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* (9th Cir.)**

BIO 4/25. Reply 5/11. Dist. for 5/31. CVSG 6/4.

**Preemption:  
Airline Deregulation Act**

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.

**[17-1236](#) *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.

**[17-1498](#) *Atlantic Richfield Co. v. Christian* (Mont.)**

BIO 7/2. Reply 7/18. Dist. for 9/24. CVSG 10/1.

**Environmental Regulation:  
CERCLA**

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.

[17-1529](#) Clearstream Banking S.A. v. Peterson (2d Cir.)

Foreign Sovereign Immunities Act:  
Property Abroad

[17-1530](#) Banca UBAE, S.p.A. v. Peterson (2d Cir.)

[17-1534](#) Bank Markazi v. Peterson (2d Cir.)

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.

[17-1678](#) Hernández v. Mesa (5th Cir.)

BIO 8/6. Reply 8/17. Dist. for 9/24. CVSG 10/1.

*Bivens* Claims:  
Cross-Border Shootings

On whether, if plaintiffs plausibly allege that a rogue federal law enforcement officer violated clearly established Fourth and Fifth Amendment rights for which there is no alternative legal remedy, the federal courts can and should recognize a damages *Bivens* claim, among other issues.

[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.”

[18-164](#) First Solar, Inc. v. Mineworkers’ Pension Scheme (9th Cir.)

BIO 9/5. Reply 9/19. Dist. for 10/5. CVSG 10/9.

Securities Litigation:  
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.

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

BIO 9/18. Dist. for 10/26. CVSG 10/29.

*Bivens* Claims:  
Cross-Border Shootings

On whether a damages remedy under *Bivens* in the context of a cross-border shooting involving a domestic law enforcement agency “misapplies Supreme Court precedent and violates separation-of-powers principles” where no other remedy exists.

[18-486](#) Toshiba Corp. v. Automotive Industries Pension Trust Fund (9th Cir.)

CFR 11/2. BIO 12/12. Reply 12/21. Dist. for 1/11. CVSG 1/14.

Securities Litigation:  
Domestic Transaction

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

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

## HELD / AWAITING ACTION

**16-317 Deutsche Bank Trust Co. Americas v. Robert R. McCormick Foundation (2d Cir.)**

**Bankruptcy:  
Fraudulent Transfers**

BIO 10/24/17. Reply 11/4/17. Dist. for 4/13/17. Dist. for 4/21/17.  
Dist. for 4/28/17. Dist. for 5/11/17. Supp. Pet. Br. 1/8. Supp. Resp. Br. 1/12.  
Supp. Reply 1/17. Dist. for 3/2. Dist. for 3/16. Dist. for 3/23. Dist. for 3/29.  
(Deferred pending motion in lower court.)

On whether a Bankruptcy Code provision prohibiting a trustee from avoiding a transfer made “by or to (or for the benefit of)” a financial institution applies when the effects of the transfer ultimately fall on companies that are not financial institutions, among other issues.

**17-1269 Kumar v. Republic of Sudan (4th Cir.)**

**Foreign Sovereign Immunities Act:  
Service of Process**

Brief in Support 4/9. Dist. for 6/14. Dist. for 6/21.  
(Likely held for 17-1236, *Republic of Sudan v. Owens*; 17-1268, *Opati v. Republic of Sudan*; 17-1406, *Republic of Sudan v. Opati*)

On whether a service packet is “addressed and dispatched to the head of the ministry of foreign affairs” of a foreign state when it is addressed and sent to the state’s embassy in the United States.

**17-1348 Nevada Department of Wildlife v. Smith (Cal. Ct. App.)**

**State Sovereign Immunity:  
*Nevada v. Hall***

CFR 5/3. BIO 6/1. Reply 6/7. Dist. for 6/21. Dist. for 6/27.  
(Likely held for 17-1299, *Franchise Tax Board of California v. Hyatt*)

On whether *Nevada v. Hall* (1979), which permits a sovereign state to be haled into another state’s courts without its consent, should be overruled.

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

**First Amendment:  
Retaliatory Arrest**

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

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.)**

**Criminal Law:  
Juvenile LWOP**

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*)

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 taking and due process claims arising from a subdivision disapproval ripen under *Williamson County v. Hamilton Bank* (1985) upon disapproval of an initial application or only upon a final, definitive determination of permitted use of property.

**18-319 E. & J. Gallo Winery v. Arreguin (Cal. Ct. App.)**

CFR 10/31. BIO 1/2. Reply 1/14. Supp. Pet. Br. 1/14. Dist. for 2/15.  
(Likely held for 17-988, *Lamps Plus, Inc. v. Varela*)

**Arbitration:  
Class Arbitration**

On whether a court or an arbitrator decides whether an arbitration agreement permits class arbitration.

**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.)**

**Immigration:  
DACA**

[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.

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.)**

**Environmental Regulation:  
Clean Water Act**

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

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

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

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

**Due Process:  
Trust Taxation**

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

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

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.

[18-821](#) **Wills v. United States (5th Cir.)**

**Criminal Law:  
Double Jeopardy Clause**

Resp. Memo 2/13. Dist. for 3/1.

(Likely held for 17-646, *Gamble v. United States*)

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

## GRANTED CASES INVOLVING PUBLIC CITIZEN – 2018 TERM

**17-290 Merck Sharp & Dohme Corp. v. Albrecht (3d Cir.)**  
Cert. granted 6/28. Arg. 1/7.

**Preemption:  
Failure to Warn Claim**

*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.

**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**

*Scott Nelson of 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.