U.S. Supreme Court Docket, October 2017 Term — Antitrust & Trade Regulation Cases

Issued Opinions	Docket No.	Subject	Status, Transcript, Filings	Holding
Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co. Ltd.	16-1220 (4/3/17)	Antitrust	6/14/18—Decided (Ginsburg, R.) on behalf of a unanimous Court. Petition granted 1/12/18 (limited to Questions 2) Reply Brief Animal Science Products, et al. 4/17/18 Respondent Brief 3/28/18 Petitioners Brief Animal Science Products, Inc. 2/26/18 Amicus Brief: United States; Professors Of Conflict Of Laws And Civil Procedure; Professors of International Litigation; Chamber of Commerce of The United States of America; Donald Clarke and Nicholas Calcina Howson; American Antitrust Institute; Professors Samuel Estreicher and Thomas Lee Attorneys: William A. Isaacson (Boies Schiller Flexner LLP) for Animal Science Products, Inc. Supreme Court Docket	A federal court determining foreign law under Federal Rule of Civil Procedure 44.1 should accord respectful consideration to a foreign government's submission, but the court is not bound to accord conclusive effect to the foreign government's statements. Antitrust Law Daily analysis Question Presented: Whether the Second Circuit, in conflict with the decisions of three courts of appeals, erred in exercising jurisdiction under 28 U.S.C. § 1291 over a pre-trial order denying a motion to dismiss following a full trial on the merits. Whether a court may exercise independent review of an appearing foreign sovereign's interpretation of its domestic law (as held by the Fifth, Sixth, Seventh, Eleventh, and D.C. Circuits), or whether a court is "bound to defer" to a foreign government's legal statement, as a matter of international comity, whenever the foreign government appears before the court (as held by the opinion below in accord with the Ninth Circuit).

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				Whether a court may abstain from exercising jurisdiction on a case-by-case basis, as a matter of discretionary international comity, over an otherwise valid Sherman Antitrust Act claim involving purely domestic injury. Second Circuit decision (9/20/16)
Granted Petitions	**Docket No.**	**Subject**	**Status, Deadlines**	**Holding**
Theodore H. Frank, et al. v. Paloma Gaos, et al.	17-961 (1/3/18)	Privacy	Petition granted 4/30 Response due 3/9/18 Respondent Brief 3/9/18 Brief in Opposition Paloma Gaos 3/9/18 Reply brief Theodore H. Frank 3/22/18 Amicus briefs: Center for Constitutional Jurisprudence; Cato Institute; Center for Individual Rights; Attorney General of Arizona, et al. Attorneys: Andrew Michael Grossman (Baker & Hostetler LLP) for Theodore H. Frank, et al. Donald Manwell Falk (Mayer Brown LLP) for Google LLC Supreme Court Docket	Whether, or in what circumstances, a *cy pres* award of class action proceeds that provides no direct relief to class members supports class certification and comports with the requirements that a settlement binding class members must be "fair, reasonable, and adequate." Ninth Circuit decision (8/22/17)
State of Ohio v. American Express Company	16-1454 (6/2/17)	Antitrust	Petition granted 10/16/17 Oral arguments transcript 2/26/2018 Response due 7/6/17, extended 8/21/17	Under the "rule of reason," did the Government's showing that Amex's anti-steering provisions stifled price competition on the merchant side of credit card platform suffice to prove anticompetitive effects and

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			Brief in Opposition: United States; American Express Company Reply brief United States 2/18 Select Amicus Briefs: American Antitrust Institute, Ahold U.S.A., Inc., John M. Connor, Discover Financial Services, Retail Litigation Center, Inc., Former federal antitrust officials, Southwest Airlines Co., United States Public Interest Research Group Education Fund, Inc., J. Gregory Sidak and Robert D. Willig; The Computer & Communications Industry Association; The Clearing House Association L.L.C.; Antitrust Law & Economics Scholars; Prof. David S. Evans and Prof. Richard Schmalensee; The Australian Taxpayers' Alliance; Pharmaceutical Research and Manufacturers of America Attorneys: Eric E. Murphy, State Solicitor of Ohio Supreme Court Docket	thereby shift to Amex the burden of establishing any procompetitive benefits from the provisions? Second Circuit decision (1/5/17)
National Institute of Family and Life Advocates v. Becerra	16-1140 (3/20/17)	Advertising	Petition grated 11/13/17 Oral Arguments Transcript 3/20/18 Reply Brief NIFLA 3/13/18 Respondents Brief Thomas E. Montgomery 2/20/18 Respondents Brief Xavier Becerra 2/20/18 Amicus Brief: United States; Compassion & Choices; Legal Ethicists; Public Citizen, Inc.; Members of Congress; American Academy of Pediatrics, et al.; Planned Parenthood Federation of America and Physicians for Reproductive Health; Black Women for Wellness, et al.; California Women's Law Center, et al.; Equal Rights	Whether the Free Speech Clause or the Free Exercise Clause of the First Amendment prohibits California from compelling licensed pro-life centers to post information on how to obtain a state-funded abortion and from compelling unlicensed pro-life centers to disseminate a disclaimer to clients on site and in any print and digital advertising. Ninth Circuit decision (10/14/16)

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			Advocates, et al.; American Medical Association; States of New York, et al.; 51 Reproductive Rights, Civil Rights and Social Justice Organizations; City and County of San Francisco, et al.; National League of Cities, et al.; Social Science Researchers Petitioner's Brief NIFLA 1/8/18 Response due 4/20/17 Attorneys: John C. Eastman (Center For Constitutional Jurisprudence), David Andrew Cortman (Alliance Defending Freedom), and Anne O'Connor (National Institute of Family and Life Advocates) for National Institute of Family and Life Advocates d/b/a NIFLA. Thomas Dale Bunton (Office of County Counsel) for Thomas E. Montgomery. Joshua Aaron Klein, California Department of Justice. Carrie L. Mitchell (McDougal, Love, Boehmer, Foley, Lyon & Canlas) for Morgan Foley Supreme Court Docket	
Pending Petitions	**Docket No.**	**Subject**	**Status, Deadlines**	**Questions Presented**
Pennsylvania Higher Education Assistance Agency v. Silver	17-1548 (4/24/18)	Consumer Protection	Response due 6/14/18 Attorneys: Donald Edward Bradley (Musick, Peeler & Garrett, LLP) for Pennsylvania Higher Education Assistance Agency Supreme Court Docket	Does an amendment to the Telephone Consumer Protection Act that insulates parties collecting federal debts "impair rights a party possessed when he acted," if applied to dismiss a lawsuit pending when the amendment was enacted, and therefore have impermissible retroactive effect under this Court's *Landgraf* standard? Ninth Circuit decision 12/13/17

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Mayor and City Council of Baltimore v. Greater Baltimore Center for Pregnancy Concerns, Inc.	17-1369 (3/23/18)	Advertising	Response due 4/30/18 Brief in Opposition Greater Baltimore Center for Pregnancy Concerns, Inc. 4/30/18 Reply Brief Mayor and City Council of Baltimore 5/14/18 Attorneys: Suzanne Sangree, Baltimore City Department of Law Supreme Court Docket	Whether the Free Speech Clause of the First Amendment prohibits the City of Baltimore from requiring an unlicensed entity to make truthful disclosures via a posted sign about the scope of medical services it offers when the entity holds itself out to the public as a medical practice and engages in "purposely vague" advertising Fourth Circuit decision 1/5/18
Universal Processing Services of Wisconsin, LLC v. Federal Trade Commission	17-1309 (3/13/18)	Consumer Protection	Response due 5/16/18 Brief in Opposition FTC 5/16/18 Amicus Brief: The Electronic Transactions Association Attorneys: Lewis Steven Wiener (Eversheds Sutherland US LLP) for Universal Processing Services of Wisconsin, LLC. Noel J. Francisco for the FTC. Supreme Court Docket	Can a passive service provider found liable solely for a violation of the Telemarketing Sales Rule, 16 C.F.R. § 310.3(b), be held jointly and severally liable for the bad acts of common enterprise co-defendants who violated the FTC Act 15 U.S.C. § 53(b), where, as other Circuit Courts of Appeals have held consistently, such a punitive remedy must be predicated upon a finding of interrelation or control (a "common enterprise") between defendants that committed the underlying FTC Act violations? Whether the FTC violated Universal's due process rights by failing to provide prior warning that it would seek joint and several liability or that such a penalty could apply based on an alleged violation of the Telemarketing Sale Rule? Eleventh Circuit decision (12/13/17)
Roberts v. AT&T Mobility, Inc.	17-1287 (3/9/18)	Advertising	Response due 5/14/18 Brief in Opposition AT&T Mobility, Inc. 5/14/18 Attorneys: Alexander H. Schmidt (Alexander H. Schmidt, PC)	Whether *Denver Area Educ. Telecomm. Consortium, Inc. v. FCC*, 518 U.S. 727 (1996) or *American Manufacturers Mutual Insurance Co. v. Sullivan*, 526 U.S. 40 (1999) govern this case?

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			for Marcus A. Roberts. Supreme Court Docket	Whether the state action doctrine should be applied in a way that insulates laws authorizing private constitutional violations from judicial scrutiny. Ninth Circuit decision (12/11/17)
Henry Schein, Inc. v. Archer and White Sales, Inc.	17-1272 (3/9/18)	Antitrust	Response due 5/11/18 Reply brief Henry Schein, Inc. 5/29/18 Brief in Opposition Archer and White Sales, Inc. 5/11/18 Attorneys: Kannon K. Shanmugam (Williams & Connolly LLP) for Henry Schein, Inc. Supreme Court Docket	Whether the Federal Arbitration Act permits a court to decline to enforce an agreement delegating questions of arbitrability to an arbitrator if the court concludes the claim of arbitrability is "wholly groundless." Fifth Circuit decision (12/21/17)
First Resort, Inc. v. Herrera	17-1087 (2/1/18)	Advertising	Response due: 3/5/18 Reply Brief First Resort, Inc. 5/1/18 Brief in Opposition Dennis J. Herrera 4/19/18 Amicus briefs: Democrats for Life of America; Christian Legal Society; Ethics and Religious Liberty Commission of the Southern Baptist Convention; Institutional Religious Freedom Alliance; Lutheran Church--Missouri Synod; Heartbeat International, Inc.; American Center for Law & Justice; Southeastern Legal Foundation Attorneys: Mark Leonard Rienzi (The Becket Fund for Religious Liberty) for First Resort, Inc. Supreme Court Docket	Whether a speech regulation applying only to speech concerning pregnancy services by pregnancy centers that do not refer for abortion, and enacted to target speakers with pro-life views, is subject to strict scrutiny. Whether this Court's "commercial speech" doctrine can be applied to the speech of non-profit pregnancy centers who provide free and often religiously motivated assistance to pregnant women. Ninth Circuit decision (6/27/17)

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CTIA -The Wireless Association v. City of Berkeley, California	17-976 (1/9/18)	Advertising	Response due 4/2/18 Brief in Opposition The City of Berkeley 4/2/18 Reply Brief CTIA – The Wireless Association 4/17/18 Amicus briefs: The Cato Institute, Competitive Enterprise Institute, and Cause of Action Institute; Pacific Legal Foundation; Retail Litigation Center, Inc., et al.; The Rutherford Institute; The National Association of Manufacturers Attorneys: Theodore B. Olson (Gibson Dunn & Crutcher LLP) for CTIA - The Wireless Association. Lawrence Lessig for City of Berkeley Supreme Court Docket	Whether *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985) reduced scrutiny of compelled commercial speech applies beyond the need to prevent consumer deception. When *Zauderer* applies, whether it is sufficient that the compelled speech be: (a) factually accurate—even if controversial and, when read as a whole, potentially misleading; and (b) merely reasonably related to any non-"trivial" governmental interest. Ninth Circuit decision (4/21/17)
Apple Inc. v. Robert Pepper, et al	17-204 (8/2/17)	Antitrust	Response due 9/6/17 Brief in opposition Robert Pepper, et al 9/6/17 Reply brief Apple Inc. 9/20/17 Amicus briefs: United States Attorneys: Daniel M. Wall (Latham & Watkins LLP) for Apple Inc. Supreme Court Docket	Whether consumers may sue for antitrust damages anyone who delivers goods to them, even where they seek damages based on prices set by third parties who would be the immediate victims of the alleged offense? Ninth Circuit decision (1/12/17)
Denied Petitions	**Docket No.**	**Subject**	**Status, Deadlines**	**Questions Presented**
Wyckoff v. Office of	17-1079 (1/31/18)	Antitrust	Petition denied 6/11/18	Whether the antitrust "exemption" this Court recognized for baseball's reserve system

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the Commissioner of Baseball			Response due: 3/15/2018 Brief in Opposition Office of the Commissioner of Baseball 4/16/18 Reply Brief Jordan Wyckoff 4/30/18 Attorneys: Robert L. King (Korein Tillery LLC) for Jordan Wyckoff and Darwin Cox. Elliot R. Peters (Keker, Van Nest & Peters LLP) for the Office of the Commissioner of Baseball, et al. Supreme Court Docket	extends to Major League Baseball's employment practices for non-players like baseball scouts? Second Circuit decision (8/31/17)
Right Field Rooftops v. Chicago Baseball Holdings, LLC	17-1074 (1/30/18)	Antitrust	Petition denied 6/11/18 Response due 4/16/2018 Brief in Opposition Chicago Baseball Holdings, LLC 4/16/18 Attorneys: James R. Figliulo (Figliulo & Silverman, PC) for Right Field Rooftops, LLC d/b/a Skybox, Right Field Properties, LLC and 3633 Rooftop Management, LLC d/b/a Lakeview Baseball Club. Paul D. Clement (Kirkland & Ellis LLP) Chicago Baseball Holdings, LLC. Supreme Court Docket	Whether a monopolization or attempted monopolization of rooftop businesses by the owner of a neighboring baseball franchise is exempted from the Sherman Antitrust Act as "the business of professional baseball." Whether this Court's decision in *Federal Baseball Club, Inc. v. National League of Professional Baseball Clubs*, 259 U.S. 200 (1922) and its progeny that "the business of professional baseball" is exempted from the Sherman Antitrust Act and all antitrust laws should be reversed. Seventh Circuit decision (9/1/17)
Contest Promotions, LLC v. City and County of San Francisco	17-1152 (2/14/18)	Advertising	Petition denied 5/29/18 Response due 3/19/18 Brief in Opposition City and County of San Francisco 4/23/18 Amicus briefs: Goldwater Institute and Mississippi Justice	Whether the First Amendment permits a municipality to ban all signs, of any kind, advertising off-premises commercial activity, without making any showing that the ban furthers a substantial government interest in a direct, material, and tailored way. Ninth Circuit decision (8/16/17)

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			Institute; Southeastern Legal Foundation and NFIB Small Business Legal Center; Pacific Legal Foundation Attorneys: Joshua Patashnik (Munger, Tolles & Olson LLP) for Contest Promotions, LLC Supreme Court Docket	
Alcon Laboratories, Inc. v. Cottrell	17-1337 (3/21/18)	State Unfair Trade Practices	Petition denied 5/21/18 Response due 4/23/18 Attorneys: Kannon K. Shanmugam (Williams & Connolly LLP) for Alcon Laboratories, Inc., et al. Supreme Court Docket	Whether, for purposes of standing under Article III, a plaintiff's speculation that he might have paid less for treatment if a pharmaceutical products were packaged differently is sufficient to establish an economic injury in fact. Third Circuit decision (10/18/17)
The Common Application Inc. v. CollegeNET, Inc.	17-1264 (3/6/18)	Antitrust	Petition denied 5/14/18 Response due 4/9/18 Brief in Opposition CollegeNET, Inc. 4/9/18 Reply Brief The Common Application Inc. 4/20/18 Attorneys: Allyson N. Ho and Thane D. Scott (Morgan, Lewis & Bockius LLP) for The Common Application Inc. Supreme Court Docket	Whether the Ninth Circuit departed from this Court's precedent in holding that an antitrust plaintiff alleging that the defendant's conduct produced lower prices and higher output can nonetheless satisfy the antitrust injury requirement merely by alleging that its own products are superior to those offered by the defendant. Whether the petition should be held for this Court's decision in *Ohio v. American Express Co.*, No. 16-1454, because that case raises the same issue as this one: whether, under the rule of reason, establishing anticompetitive harm on only one side of a two-sided market is sufficient to satisfy the plaintiff 's burden, or whether instead the plaintiff must establish harm to both sides. Ninth Circuit decision (10/23/17)

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Industrial Models, Inc. v. SNF, Inc.	17-1367 (3/26/18)	Antitrust	Petition denied 4/30/18 Response due 4/30/18 Attorneys: Eric Van Campen Jansson (Jansson Munger Mckinley & Kirby Ltd.) for Industrial Models, Inc. Hugh G. Connor II (Kelly Hart & Hallman, LLP) SNF, Inc., et al. Supreme Court Docket	Whether ordinary plausible fact pleading of objective baselessness is sufficient under Federal Rule of Civil Procedure 8(a)(2) to satisfy the "objectively baseless" prong of *Professional Real Estate Investors, Inc. v. Columbia Pictures Industries, Inc.*, 5008 U.S. 49 (1993), in a Sherman Act complaint alleging "sham" intellectual property litigation. Whether the Federal Circuit erred by holding that Petitioner's Sherman Act complaint lacks sufficient pleading of objective baselessness, where the complaint states that Respondents, in their predicate "trade dress infringement" litigation against Petitioner, alleged "infringement" despite knowing they had no relevant trade dress and persistently failing to identify any trade dress, and where the Federal Circuit left undisturbed the district court's non-infringement and "exceptional case" finding that "[Respondents] could not identify any relevant trade dress …" Whether an express *threat* of objectively baseless litigation fails to support a Sherman Act claim alleging "sham" litigation as the Federal Circuit held with respect to defendants' patent and copyright litigation threats against Petitioner, or whether such a threat suffices, as the First Circuit has held. Whether the Federal Circuit erred by affirming denial of Petitioner's Rule 15(a)(2)

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				motion for leave to amend the complaint, based on (a) an undue-delay theory contradicted by precedent of this Court as recognized by the Second and Seventh Circuits, and (b) a first-instance "futility" inquiry and finding of a kind held unlawful by the First, Seventh and Ninth Circuits. Federal Circuit decision (11/7/17)
Puerto Rico Telephone Company, Inc. v. San Juan Cable LLC	17-1215 (2/28/18)	Antitrust	Petition denied 4/23/18 Response due 4/2/18 Attorneys: Aaron M. Panner (Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.) for Puerto Rico Telephone Company, Inc. Supreme Court Docket	Whether pursuing a series of petitions to courts and administrative bodies, filed for the purpose and with the effect of using the governmental process itself—rather than the results of that process—to harm competition, may be a basis for liability under the Sherman Act , even if no single petition in the series was objectively baseless. First Circuit decision (10/31/17)
U1IT4less, Inc. v. FedEx Corporation	17-1162 (2/15/18)	RICO	Petition denied 4/16/18 Response due 3/22/18 Attorneys: Jay L. T. Breakstone (Parker Waichman LLP) for U1IT$less, Inc. Supreme Court Docket	Do the canons of statutory construction permit a court to re-cast the unambiguous language of 49 U.S.C. 13708(b) to allow the presentation of a fraudulent and misleading overcharge to a shipper so long as the total amount of that overcharge is accurately revealed on the face of the shipping invoice? Are parties to an action bound to consistent truth before all courts or are they permitted to represent and testify to the same essential facts in diametrically opposed ways in order to suit the exigencies of the moment? May a corporation assert, in certain courts, a legal and practical separate between a holding company and all of its subsidiaries, while

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				asserting precisely the opposite in other courts when that prior position would subject it to potential liability? Section Circuit decision (9/18/17)
Salt River Project Agricultural Improvement and Power District v. SolarCity Corp.	17-368 (9/7/17)	Antitrust	Petition dismissed, pursuant to Rule 46, 3/22/18 Petition Granted 12/1/17 Arguments scheduled for 4/17/2018 Response due 10/11/17 Brief in Opposition SolarCity Corp. 10/11/17 Amicus Brief: American Public Power Association; United States Attorneys: Molly S. Boast (Wilmer Cutler Pickering Hale and Dorr, LLP) for Salt River Project Agricultural Improvement and Power District. Richard A. Feinstein (Boies Schiller Flexner, LLP) for SolarCity Corporation. John Michael Baker (Greene Espel, PLLP) for American Public Power Association, et al. Supreme Court Docket	Whether orders denying state-action immunity to public entities are immediately appealable under the collateral-order doctrine? Ninth Circuit decision (6/12/17)
Sandusky Wellness Center, LLC v. ASD Specialty Healthcare, Inc.	17-803 (11/30/17)	Privacy	Petition denied 3/19/18 Response due 1/3/18 Respondent brief ASD Specialty Healthcare, Inc. 2/8/18 Reply brief Sandusky Wellness Center, LLC 2/28/18 Attorneys: Glenn L. Hara (Anderson + Wanca) and George	Whether the decision of one circuit court of appeals becomes binding on all other circuits if the decision reviews the validity of an agency order under the Hobbs Act, 28 U.S.C. § 2342(1), as the Sixth Circuit held in this case and the Ninth Circuit held in *Peck v. Cingular Wireless, LLC*, 535 F.3d 1053, 1057 (9th Cir. 2008), or whether "there is no rule of

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			D. Jonson and Matthew E. Stubbs (Montgomery, Rennie & Jonson) for Sandusky Wellness Center, LLC. Supreme Court Docket	intercircuit stare decisis," and one circuit's ruling in a Hobbs Act appeal is not binding outside that circuit, as the Seventh Circuit held in *Brizendine v. Cotter & Co.*, 4 F.3d 457, 462 n.4 (7th Cir.), *rev'd on other grounds*, 511 U.S. 1103 (1994), and the First Circuit held in *Bhd. of Locomotive Eng'rs v. Boston & Maine Corp.*, 788 F.2d 794, 802 (1st Cir. 1986). Whether an ability to "identify" class members is a prerequisite to class certification—under the rubric of "ascertainability," "predominance," or "superiority"—as the Sixth Circuit held in this case, or whether class-member identification is merely one aspect of "manageability," which should not ordinarily preclude class certification, as the Seventh and Ninth Circuits held in *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 663–64 (7th Cir. 2015), and *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1127 (9th Cir. 2017). Sixth Circuit decision (7/11/17)
All Nippon Airways Co., Ltd. v. Wortman	17-659 (10/18/17)	Antitrust	Petition denied 3/19/18 Response due 12/4/17 Brief in opposition Daniel Wortman, et al. 2/9/18 Reply brief All Nippon Airways Co., Ltd. 2/22/18 Amicus briefs: International Air Transportation Association	Whether the filed-rate doctrine—which this Court firmly established in *Keogh v. Chicago & Northwest Railway Co.*, 260 U.S. 156 (1922), and reaffirmed in *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409 (1986)—still applies where rates are filed with a federal agency pursuant to a statutory regulatory scheme (as held by the First, Second, and Seventh Circuits), or whether it no longer applies to such rates if a court finds

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			Attorneys: Jonathan Jeffrey Faria (Kirkland & Ellis LLP) for All Nippon Airways. Christopher Lee Lebsock (Hausfeld, LLP) for Daniel Wortman. Supreme Court docket	the agency lacks sufficient "practical ability" to regulate those rates (as held by the Ninth Circuit's opinion below. Whether, and to what extent, the field-rate doctrine applies where a federal agency retains regulatory authority over rates, but chooses to exercise that authority by establishing a regulatory system, which it periodically revisits and revises, that does not require each rate to be literally filed with the agency. Ninth Circuit decision (4/14/17)
ICTSI Oregon, Inc. v. International Longshore and Warehouse Union	17-770 (11/22/17)	Antitrust	Petition denied 3/5/18 Response due 12/27/17 Respondent brief Pacific Maritime Association 1/26/18 Reply brief ICTSI Oregon, Inc. 2/8/18 Attorneys: Michael Thomas Garone and Thomas M. Triplett (Schwabe, Williamson & Wyatt, P.C.) for ICTSI Oregon, Inc. Supreme Court Docket	Whether a claim that parties to a collective bargaining agreement have violated the antitrust laws by conspiring to seize work controlled by employers outside the bargaining unit through coercion that violates Sections 8(b)(4)(B) and 8(e) of the National Labor Relations Act is barred as a matter of law by application of the nonstatutory labor exemption. Ninth Circuit decision (7/24/17)
AFMS LLC v. United Parcel Service, Inc.	17-1092 (1/29/18)	Antitrust	Petition denied 2/26/18 Response due: 3/7/18 Amicus Briefs: Antitrust Law Professors Attorneys: David Wayne Kesselman (Kesselman Brantly Stockinger LLP) for AFMS LLC. Alice Loughran (Steptoe & Johnson LLP) for FedEx Corp. Deanne Elizabeth Maynard	In a group boycott case, does the per se rule apply to an agreement among horizontal competitors, where the agreement has the purpose and effect of excluding market participants, but the market participants are not direct "suppliers or customers" of defendants? Alternatively, to address disparate analyses

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			(Morrison & Foerster LLP) for United Parcel Service, Inc. Supreme Court Docket	among the Circuit, does a court err in holding that a defendant's assertion of a procompetitive justification obviates the presumption of "quick look" rule of reason analysis, so that the antitrust plaintiff is required to proffer evidence supporting a relevant market under a full-blown rule of reason analysis? Ninth Circuit decision (8/21/17)
Johnson v. Commission on Presidential Debates	17-916 (12/27/17)	Antitrust	Petition denied 2/20/18 Response due 1/29/18 Attorneys: Bruce Elliott Fein (Fein & Delvalle PLLC) for Gary E. Johnson. Supreme Court Docket	Whether the exclusionary rules for participation in presidential debates established by an agreement between the Commission on Presidential Debates, a joint venture of the Republican and Democratic National Committees, and the presidential nominees of the Republican and Democratic Parties, to destroy or cripple competition by third party nominees or independent candidates in highly commercialized general election campaigns fall within the sweeping ambit of the Sherman Antitrust Act, 15 U.S.C. Sections 1 and 2, and the Clayton Act, 15 U.S.C. Sections 15 and 26. District of Columbia Circuit decision (8/29/17)
Wyeth LLC v. Rite Aid Corp.	17-771 (11/20/17)	Antitrust	Petition denied 2/20/18 Response due 12/27/17 Attorneys: Jay Philip Lefkowitz (Kirkland & Ellis LLP) for Teva Pharmaceutical Industries, Ltd., et al., and Robert A. Milne (White & Case LLP) for Wyeth LLC et al. Supreme Court Docket	Whether a patentee's grant of an exclusive license to settle a single patent dispute may give rise to antitrust liability notwithstanding 35 U.S.C. 261. Third Circuit decision (8/21/17) Third Circuit decision (4/13/17)

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Pfizer Inc. v. Rite Aid Corporation	17-752 (11/20/17)	Antitrust	Petition denied 2/20/18 Response due 12/22/17 Attorneys: Jay Philip Lefkowitz, John C. O'Quinn, Michael D. Shumsky, Jonathan D. Janow, and Andrew C. Lawrence (Kirkland & Ellis LLP) for Ranbaxy Inc., et al. Robert A. Milne, Raj S. Gandesha, Bryan D. Gant, and Sheryn George (White & Case LLP) for Pfizer Inc., et al. Supreme Court Docket	Whether an antitrust complaint alleging a "large" and "unjustified" reverse payment settlement agreement states a plausible claim for relief when it cherry-picks among pieces of a larger agreement to conjure a purported transfer of value from a patentee to patent challenger, but does not account for the net flow of consideration. Third Circuit decision (8/21/17)
Bais Yaakov of Spring Valley v. Anda, Inc.	17-351 (9/5/17)	Advertising	Petition denied 2/20/18 Response due 10/10/17 Reply brief Bais Yaakov of Spring Valley, et al. 1/30/18 Brief in Opposition: Private Respondents Anda, Inc., et al. 1/16/18; Federal Respondents 1/16/18 Attorneys: Aytan Y. Bellin (Bellin & Associates LLC), Roger Furman (Law Offices of Ramin Azadegan), Glenn L. Hara (Anderson + Wanca), and David M. Oppenheim (Bock, Hatch, Lewis & Oppenheim, LLC) for Bais Yaakov of Spring Valley. Supreme Court Docket	Where Congress confers broad authority on an agency to administer a statute, and the statute is silent regarding the subject matter of a particular agency rule, does that silence mean that Congress has "spoken," pursuant to *Chevron* step one, against the agency's issuing such a rule, as the D.C. Circuit panel majority held in this case? Or, as the First, Second, Sixth, Ninth, and Federal Circuits have held, does a broad grant of authority to an agency, coupled with silence on the subject matter of a particular agency rule, mean that the rule satisfies *Chevron* step one, and the court must proceed to *Chevron* step two? May a court use *expressio unius* reasoning, as the D.C. Circuit panel majority did in this case, to infer that Congress's silence about a particular subject in a statute means that Congress has "spoken," pursuant to *Chevron* step one, to forbid an agency from issuing regulations on that subject? Or, is a court precluded from using *expressio unius*

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				reasoning in the administrative context, as the Sixth, Seventh, Eighth, and Tenth Circuits have ruled-in intercircuit conflict with the D.C. Circuit panel? United States Court of Appeals for the District of Columbia Circuit decision (3/31/17)
Gresham v. Swanson	17-676 (10/31/17)	Consumer Protection	Petition denied 1/8/18 Response due 12/8/17 Attorneys: Jason Torchinsky (Holtzman Vogel Josefiak Torchinsky PLLC) and Thomas Boyd and John Knapp (Winthrop & Weinstine, P.A.) for Victor Gresham and Conquest Communications Group, LLC Supreme Court docket	Whether a state law that restricts speech on the basis of content and imposes identity-based distinctions is subject to strict scrutiny under the First Amendment? Eighth Circuit decision (8/02/17)
Ferrellgas Partners, L.P. v. Morgan-Larson, LLC	17-441 (9/21/17)	Antitrust	Petition denied 1/8/18 Response due 10/23/17 Respondents brief in opposition Morgan-Larson, LLC 11/29/17 Reply brief Ferrellgas Partners, L.P. 12/12/17 Amicus Briefs: DRI-The Voice of the Defense Bar; Atlantic Legal Foundation Attorneys: Gregory George Garre, Mellissa Arbus Sherry, Benjamin W. Snyder, Daniel M. Wall, Niall E. Lynch, Aaron T. Chiu (Latham & Watkins LLP); Craig S. O'Dear, Catesby A. Major, and Tracy R. Hancock (Bryan Cave, LLP-KCMO) for	Whether, or in what circumstances, a plaintiff adequately pleads a "continuing violation" of the antitrust laws, sufficient to satisfy the statute of limitations, by alleging continuing sales during the limitations period when the alleged price-fixing conspiracy was formed outside the limitations period? Eight Circuit decision (6/23/17)

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			Ferrellgas Partners, L.P. and Ferrellgas, L.P. Donald B. Verrilli, Jr., Benjamin J. Horwich, and Joshua S. Meltzer (Munger, Tolles & Olson LLP); Jay N. Varon, Elizabeth A.N. Haas, and Kate E. Gehl (Foley & Lardner LLP); Brandon J.B. Boulware and Jeremy Suhr (German May PC) for AmeriGas, Inc., AmeriGas Propane, Inc., AmeriGas Propane, L.P., and UGI Corporation Supreme Court Docket	
Miranda v. Selig	17-453 (9/22/17)	Antitrust	Rehearing denied 2/20/18 Petition denied 12/4/17 Response due 10/26/17 Attorneys: Samuel Kornhauser and David Truong (Law Offices of Samuel Kornhauser) and Brian David and Samuel David (Law Office of Samuel David) for Sergio Miranda. Supreme Court Docket	Whether the decision in *Federal Baseball Club of Baltimore v. National League of Professional Base Ball Clubs*, 259 U.S. 200 (1922) at its progeny should be reversed? Whether the Commissioner of Baseball and the Major League Clubs' admitted conspiracy to fix, at uniform, below market levels, the salaries they pay minor league baseball players, violates federal antitrust laws? Whether the Curt Flood Act, 15 U.S.C. 26b is unconstitutional on its face or as applied and/or vague by purportedly denying equal protection for antitrust violations of the Sherman Act to minor league baseball players but affording those antitrust protections to major league players? Ninth Circuit decision (6/26/17)
Tobinick v. Novella	17-344 (9/1/17)	Advertising	Petition denied 11/13/17 Response due 10/6/17	When a defendant is sued for both common law defamation and business disparagement under the Lanham Act, does the application of state civil court anti-SLAPP procedure

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			Attorneys: Cullin A. O'Brien (Cullin A. O'Brien Law, P.A.) for Edward Lewis Tobinick, MD d/b/a Institute of Neurological Recovery, INR PLLC, d/b/a/ Institute of Neurological Recovery Supreme Court Docket	irreconcilably conflict with Federal Rule of Civil Procedure 56? Is commercial competition a necessary element of whether business disparagement is actionable "commercial advertising or promotion" under the Lanham Act in light of this Court's definitive holding that commercial competition is not a requirement for standing to sue under the *Lanham Act in Lexmark Int'l v. Static Control Components*, 134 S.Ct. 1377 (2014)? In a Federal Rule of Civil Procedure 56 summary judgment analysis of whether business disparagement is actionable "commercial speech" under the Lanham Act, is a court required to consider the "full context" of how the defendant is disseminating the disparagement, including the defendant's secondary and for-profit uses of the disparagement? Eleventh Circuit decision (2/15/17)
HannStar Display Corporation v. Sony Electronics, Inc.	16-1457 (5/31/17)	Antitrust	Petition denied 10/30/17 Response due 7/6/17, extended 9/27/17 Respondent Waiver Brief in Opposition 9/27/17 Attorneys: James G. Kreissman, Harrison J. Frahn IV, and Elizabeth H. White (Simpson Thacher & Bartlett LLP) for	Does state privilege law govern a state law claim for which state law supplies the rule of decision, where the claim is in federal court on the basis of diversity jurisdiction and no federal question claim is present? Ninth Circuit decision (9/1/16)

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			HannStar Display Corporation Supreme Court Docket	
Bona Fide Conglomerate, Inc. v. SourceAmerica	17-283 (8/23/17)	Antitrust	Petition denied 10/30/17 Response due 9/22/17 Responses waived: 8/31/17, 9/1/17, 9/5/17, 9/6/17, and 9/8/17 Attorneys: John H. L'Estrange, Jr. (Wright, L'Estrange & Ergastolo) for Bona Fide Conglomerate, Inc. Supreme Court Docket	If a Sherman Act §1 complaint does allege parallel conduct, must the complaint still allege a specific time, place and person involved in the alleged conspiracy? Whether a Sherman Act §1 complaint that alleges direct evidence of conspiracy must still allege a specific time, place and person involved in the alleged conspiracy? Whether allegations that members of a business association agreed to adhere to the association's rules and possess governance rights in the association, without more, are sufficient to plead the element of conspiracy in violation of Section 1 of the Sherman Act? Ninth Circuit decision (5/22/17)
Power Ventures, Inc. v. Facebook, Inc.	16-1105 (3/9/17)	Advertising	Petition denied 10/10/17 Response due 4/12/17 Brief in Opposition: Facebook, Inc. Reply Brief: Power Ventures, Inc. Amicus Brief: Cato Institute Attorneys: Thomas Lee (Hughes Hubbard & Reed LLP) for Power Ventures, Inc. Supreme Court Docket	Whether an online company given consent by users of an online social networking service to access data shared or stored by the users on the service, but is prohibited access by the service, "intentionally accesses a computer without authorization . . . and thereby obtains information from [a] protected computer" in violation of 18 U.S.C. §1030(a)(2)(c) of the Computer Fraud and Abuse Act of 1986. Ninth Circuit decision (12/9/16)

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Evergreen Partnering Group, Inc. v. Pactiv Corporation.	16-1148 (3/17/17)	Antitrust	Petition denied 10/2/17 Response due 4/21/17 Response Requested 5/16/17 Brief in Opposition: Pactiv Corporation Reply Brief: Evergreen Partnering Group, Inc. Select Amicus Briefs: Law Professors and Antitrust/Industrial Organization Scholars Attorneys: Richard Wolfram for Evergreen Partnering Group, Inc. Supreme Court Docket	Whether Kodak's Rule 56 standard or the more stringent "tends to exclude the possibility of independent action" standard articulated in *Matsushita* applies where the alleged conduct, unlike in *Matsushita*, is not inherently procompetitive and is not economically or otherwise irrational. Did the court of appeals in this case improvidently apply the heightened "tends to exclude" test to Petitioner's concerted refusal to deal claim, in circumstances in which it was not warranted, and thus erroneously deny the plaintiff its right to have its case heard by the trier of fact? First Circuit decision (8/3/16)
ConAgra Brands, Inc. v. Briseño, et al.	16-1221 (4/10/17)	Advertising	Petition denied 10/10/17 Attorneys: Shay Dvoretzky (Jones Day) for Conagra Brands, Inc. Samuel Issacharoff for Robert Briseño. Anton Metlitsky (O'Melveny &Meyers, LLP) for The Chamber of Commerce of the United States of America, et al. Andrew J. Pincus (Mayer Brown LLP) for The National Association of Manufacturers. Richard A. Samp (Washington Legal Foundation) for Washington Legal Foundation. Charles Christian Sipos (Perkins Coie, LLP) for The Grocery Manufacturers Association. Supreme Court Docket	Whether Federal Rule of Civil Procedure 23 permits a district court to certify a damages class where there is no reliable, administratively feasible method for identifying the members of the class? Ninth Circuit decision (1/5/17)
SolidFX, LLC v. Jeppsen Sanderson, Inc.	16-1303 (4/25/17)	Antitrust	Petition denied 10/2/17 Response due 5/30/17 Respondent Waiver	Whether a monopolist who asserts ownership of a valid intellectual property right has absolute immunity from antitrust liability, even where the monopolist has conceded that its intellectual property did

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			Attorneys: Kenzo Kawanabe (Davis Graham & Stubbs LLP) for SolidFX, LLC. Supreme Court Docket	not relate to its anticompetitive conduct? Tenth Circuit decision (10/31/16)
American National University of Kentucky, Inc. v. Commonwealth of Kentucky	16-1372 (5/9/17)	State Unfair Trade Practices	Petition denied 10/10/17 Response due 6/15/17 Brief in opposition 8/30/17 Reply brief 9/8/17 Attorneys: Mark T. Hurst (Stoll Keenon Ogden PLLC) for American National University of Kentucky, Inc. Supreme Court Docket	Whether the Due Process Clause prohibits the delegation of fact-finding to an adverse party on an issue that is decisive of a deprivation of property? Whether this matter should be vacated and remanded in light of the Court's recent due-process holdings in *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. _, 197 L.Ed. 2d 585 (2017), and *Nelson*, which the courts below did not have occasion to consider? Ky. App. decision (8/12/16)
Alban v. Nippon Yusen Kabushiki Kaisha	16-1415 (5/23/17)	Antitrust	Petition denied 10/2/17 Response due 6/26/17 Respondent Waiver Attorneys: Warren T. Burns (Burns Charest LLP) for Jill M. Alban Supreme Court Docket	Whether—in direct conflict with this Court's decisions and the decisions of other federal courts of appeals—the Third Circuit's decision failed to apply the appropriate standards of deference to (a) the opinion of the Commission and the United States that the Shipping Act does not preempt state antitrust claims when defendants have not filed their agreement with the Commission, and/or (b) to the factual and/or regulatory or policy considerations that undergrid that preemption determination. Whether the Third Circuit improperly refused to apply a presumption against preemption of state laws of general applicability under the

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				Shipping Act, in conflict with this Court's decisions and the decision of the Ninth Circuit in *Pacific Merchant Shipping Association v. Aubrey*, 918 F. 2d 1409 (9th Cir. 1990). Third Circuit decision (1/18/17)
Suture Express, Inc. v. Owens & Minor Distribution, Inc.	16-1487 (6/9/17)	Antitrust	Petition denied 10/2/17 Response due 7/13/17, extended 8/14/17 Brief in Opposition: Owens & Minor Distribution, Inc. Attorneys: Sanford I. Weisburst (Quinn Emanuel Urquhart & Sullivan, LLP) for Suture Express, Inc. Supreme Court Docket	Whether, on a rule-of-reason tying claim, evidence that the tie increased prices or reduced quality in the tied market obviates the need for further inquiry into tying market power, or at a minimum reduces the amount of evidence from the tying market needed to establish tying market power. Whether antitrust injury may be found where an appreciable number of buyers, even if not all buyers, of the tied product suffered harm. Tenth Circuit decision (3/14/17)
Ogden v. Wells Fargo Bank, N.A.	17-137 (4/18/17)	RICO	Petition denied 10/2/17 Response due 8/28/17 Respondent Waiver Attorneys: Thomas Ogden (The Law Offices of Thomas Odgen, P.C.) for Millie Ogden. Supreme Court Docket	The circuits are split if RICO proximate cause is based on directness, foreseeability or some combination. As the "directness" test is draconian it is decimating RICO's evolution. Can RICO proximate cause be clarified as the *Anza* and *Hemi* dissents are confusing everyone? *RJR Reynolds, Inc. v. E.U.,* held a predicate act's foreign reach defines RICO's extraterritoriality. Proximate cause, however, is analyzed on whim as it is not clear where the measurement is to start from (i.e., the enterprise's edge or from a component

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				predicate act). Does *RJR Reynolds'* rationale of determining extraterritoriality by measuring from inside the enterprise, out, also control proximate cause analysis? Ninth Circuit decision (1/3/17)
Top Flite Financial Inc. v. Bridging Communities, Inc.	16-1336 (5/3/17)	Privacy	Petition denied 10/2/17 Response due 6/5/17 Conference 9/25/17 Attorneys: C. Thomas Ludden (Lipson Neilson Cole Seltzer & Garin, P.C.) for Top Flite Financial Inc. Supreme Court Docket	Respondents Bridging Communities, Inc. and Gamble Plumbing & Heating, Inc. had the burden of showing that a class should be certified under Federal Rule of Civil Procedure 23(b)(3). To meet this burden, Respondents had to show that questions whose answers would be resolved in common as to the entire class would predominate over questions that would need to be answered on an individualized, party-by-party, basis. After discovery was completed, Respondents did not introduce any evidence showing that the material issue of whether non-party InfoUSA had obtained consent from each proposed class member would be answered through common evidence. Did the failure of Respondents, as the moving party, to introduce any evidence on this issue justify denial of the motion for class certification? The Sixth Circuit held that the District Court was speculating in denying class certification because there was no evidence showing that the issue of whether InfoUSA had obtained consent to send facsimiles would be answered on a common or individualized basis. Did this decision impermissibly shift the burden of proof on the motion for class certification from

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				Respondents to Petitioner? Petitioner offered evidence that there was a significant question regarding the standing of the potential class members that would need to be answered on an individualized basis. Respondents did not offer any evidence to rebut this showing. Did the Sixth Circuit err by nonetheless finding that common issues predominated over this individualized issue? The decision on a motion for class certification is reviewed on an abuse of discretion standard. Did the Sixth Circuit appropriately defer the decision by the District Court or did the Sixth Circuit instead substitute its own judgment for that of the District Court in what amounted to a de novo review of the decision on this motion? Sixth Circuit decision (12/15/16)
S.G.E. Management, LLC v. Torres	16-1309 (5/2/17)	RICO	Petition denied 10/2/17 Respondent Brief 7/27/17 Attorneys: James C. Ho (Gibson, Dunn & Crutcher LLP) for S.G.E. Management, LLC. Supreme Court Docket	Must a RICO fraud plaintiff prove reliance, in order to establish causation—as this Court held in *Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639 (2008), and as the Second, Ninth, Tenth, and Eleventh Circuits have since reaffirmed? Or is reliance no longer required—as the Fourth Circuit and now the Fifth Circuit have held? To certify a RICO fraud class action, must the plaintiff show that reliance is a common issue because virtually all class members would have relied—as the Second, Ninth, and Tenth Circuits have all held? Or is it sufficient to show merely that it "follows logically" that some class members would have relied—as the Fifth Circuit has now held?

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				Fifth Circuit decision (9/30/16)
Corcel Corporation, Inc. v. Ferguson Enterprises, Inc.	17-47 (7/5/17)	RICO	Petition denied 10/10/17 Response due 8/7/17, extended 9/6/17 Brief in opposition Ferguson Enterprises, Inc. 9/6/17 Attorneys: Ricardo Corona (Corona Law Firm, P.A.) for Corcel Corporation, Inc. Supreme Court Docket	Whether, in applying the four-year statute of limitations in this civil RICO case, it was error for the district court and Eleventh Circuit Court of Appeals to adopt and apply a version of the separate accrual rule that effectively disregards *Rotella v. Wood*, 528 U.S. 549, 556 (2000) and instead dates the accrual of this RICO cause of action from the date of the discovery that the fraudulent scheme succeeded rather than from the date of discovery of injury to plaintiff. Whether, in applying the four-year statute of limitations in this civil RICO case, it was error for the district court and the Eleventh Circuit Court of Appeals to adopt and apply a version of the separate accrual rule that effectively disregards *Zenith Radio Corp. v. Hazeltine Research Inc.,* 401 U.S. 321, 339 (1971), and implicitly rejects the principle of that case than where the fact of future damages is speculative or their amount and nature unprovable no cause of action accrues with respect to such future damages until the date they are actually suffered. Eleventh Circuit decision (1/30/17)
Feldman v. American Dawn, Inc.	17-172 (7/31/17)	Antitrust	Petition denied 10/10/17 Response due 9/1/17	Does an employee who loses his job as a result of an antitrust conspiracy have standing to pursue an antitrust claim arising

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			Brief in opposition 9/1/17 Reply brief 9/19/17 Attorneys: James Brandon Lieber (Lieber Hammer Huber & Paul, P.C.) for Andrew Feldman. Supreme Court Docket	from the violation? Is the loss of employment an antitrust injury? Eleventh Circuit decision (3/3/17)
Dunlap v. Cottman Transmissions Systems, LLC, et al.	17-237 (8/9/17)	Franchising & Distribution	Petition denied 10/10/17 Attorneys: James M. Dunlap, pro se. James C. Rubinger for Cottman Transmissions Systems, LLC, et al. Supreme Court Docket	Whether the de novo decision of the Fourth Circuit Court of Appeals is contrary to Rule 56 Subdivision (e) of the Federal Rules of Civil Procedure in that the court did not consider and incorporate the decisions of the Virginia Supreme Court and the Fourth Circuit Court of Appeals that were previously rendered in this case and fails to recognize that this is the defendants' second attempt to gain an advantage by introducing an affirmative defense that was available at the time the case was initiated and was waived by the failure to introduce it in 2010 and that the current decision is in conflict with decisions rendered in the Second and Eight Circuits? Whether the settlement agreement reached in 2007 has been inappropriately expanded in conflict with the laws of Pennsylvania? Fourth Circuit decision (5/11/17) Fourth Circuit decision (6/24/14)

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Muslim American Society Freedom Foundation v. District of Columbia	17-274 (8/22/17)	Advertising	Petition denied 10/10/17 Response due 9/21/17 Response waived 9/11/17 Attorneys: Paul W. Hughes (Mayer Brown LLP) for Muslim American Society Freedom Foundation. Supreme Court Docket	Whether the District's event-related sign ordinance, which lacks any objective criteria defining what renders a sign "related to" an event, is unconstitutionally vague. D.C. Circuit decision (1/24/17)

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