PREVIEW
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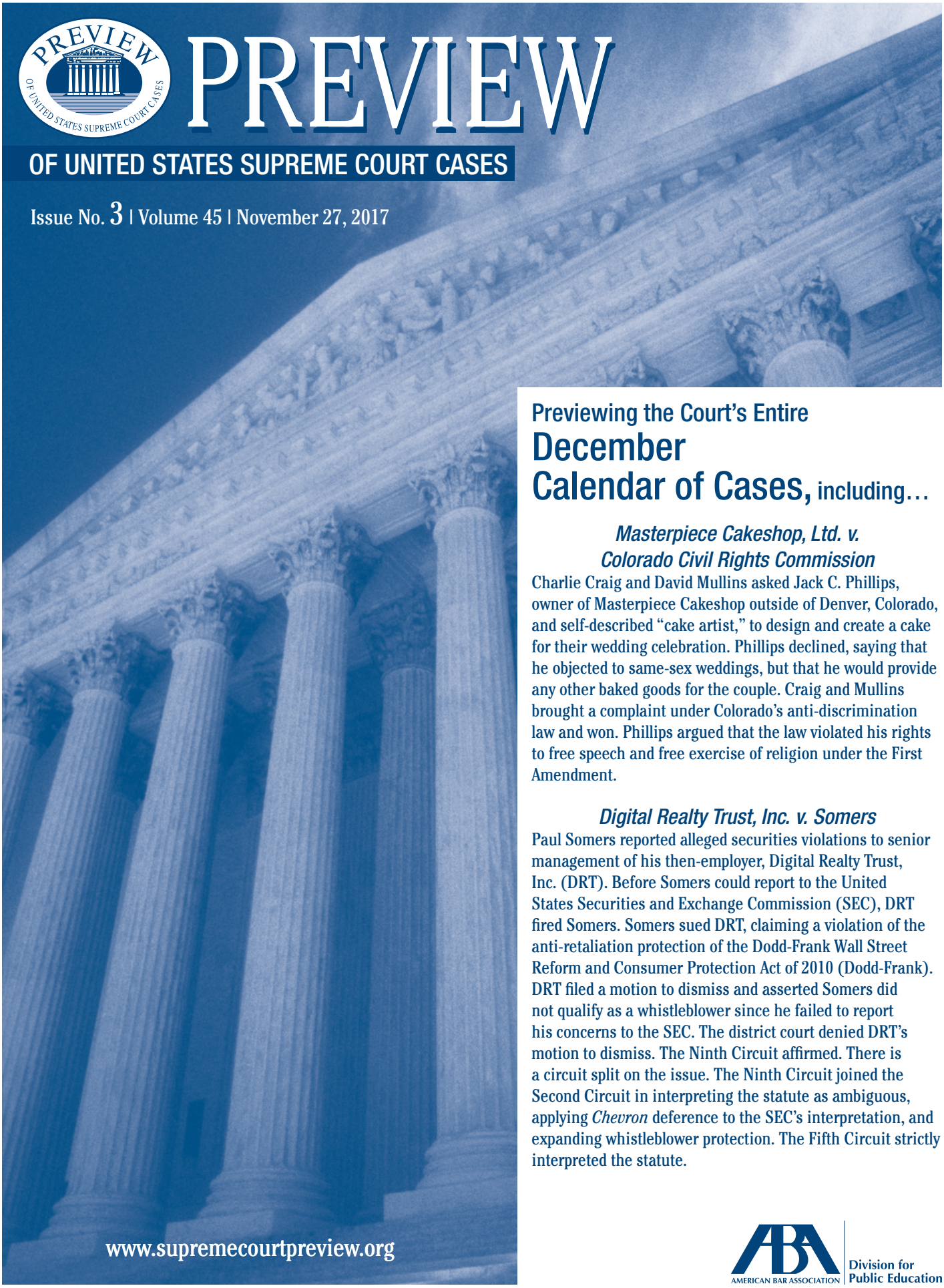
Issue No. 3 | Volume 45 | November 27, 2017



Previewing the Court's Entire December Calendar of Cases, including…

Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission

Charlie Craig and David Mullins asked Jack C. Phillips, owner of Masterpiece Cakeshop outside of Denver, Colorado, and self-described "cake artist," to design and create a cake for their wedding celebration. Phillips declined, saying that he objected to same-sex weddings, but that he would provide any other baked goods for the couple. Craig and Mullins brought a complaint under Colorado's anti-discrimination law and won. Phillips argued that the law violated his rights to free speech and free exercise of religion under the First Amendment.

Digital Realty Trust, Inc. v. Somers

Paul Somers reported alleged securities violations to senior management of his then-employer, Digital Realty Trust, Inc. (DRT). Before Somers could report to the United States Securities and Exchange Commission (SEC), DRT fired Somers. Somers sued DRT, claiming a violation of the anti-retaliation protection of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank). DRT filed a motion to dismiss and asserted Somers did not qualify as a whistleblower since he failed to report his concerns to the SEC. The district court denied DRT's motion to dismiss. The Ninth Circuit affirmed. There is a circuit split on the issue. The Ninth Circuit joined the Second Circuit in interpreting the statute as ambiguous, applying *Chevron* deference to the SEC's interpretation, and expanding whistleblower protection. The Fifth Circuit strictly interpreted the statute.

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U.S. SUPREME COURT December 2017 CALENDAR

MONDAY

NOVEMBER 27

Oil States Energy Services, LLC v. Greene's Energy Group, LLC

SAS Institute, Inc. v. Joseph Matal, Interim Director, U.S. Patent and Trademark Office, and ComplementSoft, LLC

DECEMBER 4

Christie v. National Collegiate Athletic Association and *New Jersey Thoroughbred Horsemen's Association, Inc. v. National Collegiate Athletic Association*

Rubin, et al. v. Islamic Republic of Iran, et al.

TUESDAY

NOVEMBER 28

Cyan, Inc. v. Beaver County Employees Retirement Fund

Digital Realty Trust, Inc. v. Somers

DECEMBER 5

Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission

Carlo J. Marinello, II v. United States of America

WEDNESDAY

NOVEMBER 29

Carpenter v. United States

DECEMBER 6

Murphy v. Smith

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A one-year subscription to *PREVIEW of United States Supreme Court Cases* consists of seven issues, published September through April, that concisely and clearly analyze all cases given plenary review by the Court during the present Term, as well as briefly summarize decisions as they are reached. A special eighth issue offers a perspective on the newly completed Term.

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This month, the *PREVIEW* website (www.supremecourtpreview.org) features:

- a sign-up for our weekly e-blasts highlighting all the merits and amicus briefs submitted to the Court and
- all the merits and amicus briefs for the December cases.

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Does 28 U.S.C. § 1610(g) Provide a Freestanding Attachment Immunity Exception for Terror Victim Judgment Creditors?

CASE AT A GLANCE

Victims of a terror attack obtained a default judgment against Iran and tried to attach certain artifacts loaned by Iran to the University of Chicago. The lower court determined that the artifacts were immune from attachment because no exception to the general grant of immunity under the Foreign Sovereign Immunities Act of 1976 applies. The Court will decide whether 28 U.S.C. § 1610(g) not only eases attachment of certain property, but provides a separate exception to attachment immunity, independent of the exceptions in Section 1610(a) and (b).

Rubin, et al. v. Islamic Republic of Iran, et al.
Docket No. 16-534

Argument Date: December 4, 2017
From: The Seventh Circuit

by Birgit Kurtz
Gibbons P.C., New York, NY

INTRODUCTION

The Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602 *et seq.* (FSIA), provides foreign states with two types of immunity. "Jurisdictional immunity" generally protects foreign sovereigns from the jurisdiction of courts in the United States, with the exceptions to immunity found in Sections 1605 and 1605A. "Executional immunity" generally shields U.S. property of foreign states from attachment and execution, "except as provided in sections 1610 and 1611." Section 1610(a) provides that such property "used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution" if one of the conditions enumerated in Section 1610(a)(1)–(7) is met. Number 7 in that list concerns judgments relating to acts of terrorism under Section 1605A. Section 1610(g) provides that "the property of a foreign state against which a judgment is entered under section 1605A…is subject to attachment in aid of execution,…regardless of" certain characteristics of the property.

ISSUE

Does 28 U.S.C. § 1610(g) provide a freestanding attachment immunity exception that allows terror victim judgment creditors to attach and execute upon assets of foreign state sponsors of terrorism regardless of whether the assets are otherwise subject to execution under section 1610?

FACTS

Petitioners are American victims of a suicide-bomb attack carried out by Hamas in Jerusalem in 1997, with material support from the Islamic Republic of Iran (Iran).

In 2003, petitioners commenced a lawsuit against Iran in the D.C. District Court, invoking the terrorism exception to foreign sovereign immunity, then codified in Section 1605(a)(7). (This exception was later repealed, and a new terrorism exception was enacted as Section 1605A.) Iran did not appear in the district court proceeding, and the court issued a default judgment in the amount of $71.5 million. Soon thereafter, petitioners commenced enforcement actions around the United States, including actions relating to the artifacts at issue here.

Respondents are Iran, the Field Museum of Natural History in Chicago, Illinois (Museum), and the Oriental Institute of the University of Chicago (University).

The artifacts targeted by petitioners are held in four collections. The Persepolis Collection contains about 30,000 clay tablets and fragments that Iran loaned to the University in 1937 for research, translation, and cataloging. The Herzfeld Collection is comprised of about 1,200 prehistoric artifacts from Persia, which the Museum bought from an archeologist in 1945. The Chogha Mish Collection holds clay seal impressions that Iran loaned to the University in 1960 for academic study. And the Oriental Institute Collection is made up of Persian artifacts the University received from Iran and other donors in the 1980s and 1990s.

As part of their efforts to enforce the default judgment, petitioners registered the judgment in the Northern District of Illinois and commenced attachment proceedings against the four collections. After a series of procedural disputes as well as pretrial discovery regarding the four collections, respondents moved for summary judgment, which was granted by the district court. The court

rejected petitioners' argument that the artifacts were subject to execution under Section 1610(a), holding that this exception is "limited to property used for a commercial activity *by the foreign state itself.*" The district court also found that execution under the Terrorism Risk Insurance Act of 2002 (TRIA) was not available because the artifacts were not blocked by any then-current executive order, as required by TRIA. Finally, the district court rejected petitioners' argument that Section 1610(g) provided a freestanding exception to the execution immunity for terrorism victims.

Petitioners appealed this decision, but the Seventh Circuit Court of Appeals affirmed. First, the court determined that, because the Chogha Mish Collection was no longer located within the territorial jurisdiction of Illinois, and Iran disclaimed ownership of the Herzfeld and Oriental Institute collections, only the Persepolis Collection was still subject to potential attachment and execution. The court then held that the exception to foreign sovereign immunity in Section 1610(a) did not apply because it requires that the foreign state itself must have used its property for a commercial activity in the United States, which was not the case.

The circuit court decided that Section 1610(g) does not provide an independent basis to execute on the artifacts, but merely abrogates the so-called *Bancec* rule for Section 1605A judgments. The *Bancec* rule, established by the U.S. Supreme Court in 1983, "holds that a judgment against a foreign state cannot be executed on property owned by its juridically separate instrumentality." The rule does not apply when the foreign state and its instrumentality are alter egos or when "adherence to the rule of separateness would work an injustice." Section 1610(g) abrogates "the *Bancec* rule for holders of terrorism-related judgments, allowing attachment in aid of execution 'as provided in this section' without regard to the presumption of separateness—that is, without the requirement of establishing alter-ego status or showing an injustice." Accordingly, terrorism victims with unsatisfied Section 1605A judgments against foreign states may execute on the foreign state's property and the property of its agency or instrumentality—without regard to the *Bancec* presumption of separateness—but they must do so "as provided in this section." That is, they must satisfy an exception to execution immunity found elsewhere in Section 1610—namely, subsections (a) or (b).

Finally, the circuit court agreed with the district court that the artifacts in the Persepolis Collection are not currently blocked, with the result that the artifacts are not subject to TRIA, and attachment and execution under TRIA is not available.

All three judges of the Seventh Circuit panel deciding the case agreed on the above holding. Circuit Judge David F. Hamilton, who was not on the panel, dissented from the denial of an *en banc* review, criticizing that the panel opinion created a circuit split and overruled, in part, two recent decisions of the Seventh Circuit.

CASE ANALYSIS

Foreign sovereigns have been generally immune from suit in U.S. courts for more than two centuries. As early as 1812, U.S. courts generally declined to assert jurisdiction over cases involving foreign government defendants, a practice based in a sense of "grace and comity" between the United States and other nations. Judges instead deferred to the views of the Executive Branch as to whether such cases should proceed in U.S. courts, exercising jurisdiction only where the U.S. State Department expressly referred claims for their consideration.

In 1952, U.S. courts' jurisdiction over claims against foreign states and their agents expanded significantly when the U.S. State Department issued the so-called Tate Letter, which announced the Department's adoption of a new "restrictive theory" of foreign sovereign immunity to guide courts in invoking jurisdiction over foreign sovereigns. The Tate Letter directed that state sovereigns continue to be entitled to immunity from suits involving their sovereign, or "public," acts. But acts taken in a commercial, or "private," capacity would no longer be protected from U.S. court review. But even with this new guidance, courts continued to seek the Executive Branch's views on a case-by-case basis to determine whether to assert jurisdiction over foreign sovereigns—a system that risked inconsistency and susceptibility to "diplomatic pressures rather than to the rule of law."

In 1976, Congress addressed this problem by enacting the FSIA, essentially codifying the "restrictive theory" of immunity empowering the courts to resolve questions of sovereign immunity without resort to the Executive Branch. Today, the FSIA provides the "sole basis" for obtaining jurisdiction over a foreign state in U.S. courts. The FSIA provides that "foreign states" —including their "political subdivisions" and "agencies or instrumentalities" —shall be immune from the jurisdiction of U.S. courts unless one of the exceptions to immunity set forth in the statute applies. The FSIA includes several provisions that define the scope of a foreign state's immunity and establishes detailed procedural requirements for bringing claims against a sovereign defendant.

The exceptions to jurisdictional immunity are set forth in Sections 1605 and 1605A of the FSIA. These exceptions include, among others, certain claims based on commercial activities, expropriation of property, and tortious or terrorist acts by foreign sovereign entities. In most instances, where a claim falls under one of the FSIA exceptions, the FSIA provides that the foreign state shall be subject to jurisdiction in the same manner and to the same extent as a private individual.

The FSIA also includes separate provisions establishing immunity (and exceptions to immunity) from the attachment, in aid of execution of a judgment against a foreign state or its agencies or instrumentalities, of property located in the United States. 28 U.S.C. §§ 1609–1611. Finally, the FSIA sets forth various unique procedural rules for claims against foreign states, including, for example, special rules for service of process, default judgments, and appeals.

The *Rubin* case deals with the interpretation of the FSIA provisions governing attachments based on terrorism-related judgments. The general grant of sovereign immunity is set forth in Section 1609, which is titled "Immunity from attachment and execution of property of a foreign state" and provides:

> Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

Section 1610(a) is titled "Exceptions to the immunity from attachment or execution" and provides, in pertinent part:

> The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, **used for a commercial activity** in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if
>
> …
>
> (7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based. (Emphasis added.)

The Seventh Circuit in *Rubin* held that the "use for a commercial activity" must be by the foreign sovereign itself, not merely by one of its agencies or instrumentalities. (Petitioners' petition for *certiorari* attacking this holding was not accepted by the Court.)

The *Bancec* doctrine, referenced by the court below, has its genesis in *First Nat'l City Bank v. Banco Para El Comercio Exterior de Cuba (Bancec),* 462 U.S. 611, 103 S. Ct. 2591, 88 L. Ed. 2d 46 (1983). In that decision, the Supreme Court "established a general presumption that a judgment against a foreign state may not be executed on property owned by a juridically separate agency or instrumentality." The Supreme Court held that this rule, which generally applies to private corporations, also governs the relationship between juridically separate instrumentalities of foreign governments. The Court recognized two exceptions in which the veil can be pierced: "The holder of a judgment against a foreign state may execute on the property of its instrumentality if the sovereign and its instrumentality are alter egos or if adherence to the rule of separateness would work a fraud or injustice."

But the Court expressly declined to elaborate on these exceptions. Instead, the lower courts filled the gap by formulating a set of five factors courts should consider when determining if the exceptions applied:

> (1) The level of economic control by the government;
>
> (2) whether the entity's profits go to the government;
>
> (3) the degree to which government officials manage the entity or otherwise have a hand in its daily affairs;
>
> (4) whether the government is the real beneficiary of the entity's conduct; and
>
> (5) whether adherence to separate identities would entitle the foreign state to benefits in United States courts while avoiding its obligations.

In 2008, the National Defense Authorization Act (NDAA) enacted, among others, Section 1610(g), which provides, in pertinent part:

> Property in Certain Actions.
>
> (1) In general. Subject to paragraph (3), the **property of a foreign state** against which a judgment is entered under section 1605A, and the **property of an agency or instrumentality** of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is **subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of**
>
> (A) the level of economic control over the property by the government of the foreign state;
>
> (B) whether the profits of the property go to that government;
>
> (C) the degree to which officials of that government manage the property or otherwise control its daily affairs;
>
> (D) whether that government is the sole beneficiary in interest of the property; or
>
> (E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.
>
> …
>
> (3) Third-party joint property holders.
>
> Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment. (Emphasis added.)

Because the five *Bancec*-exception factors are virtually identical to the five factors made irrelevant by Section 1610(g) ("regardless of"), the Seventh Circuit ruled in 2014 in the *Gates* case that subsection (g) overrides the *Bancec* doctrine for terrorism-related judgments. *See Gates v. Syrian Arab Republic,* 755 F.3d 568, 576 (7th Cir. 2014). The question left open by *Gates* is "whether subsection (g) goes further and establishes a freestanding 'terrorism' exception to execution immunity." The Seventh Circuit held in *Rubin* that it does not establish such an exception, expressly rejecting the Ninth Circuit contrary holding in *Bennett v. Islamic Republic of Iran,* 825 F.3d 949 (9th Cir. 2016).

Petitioners argue that Section 1610(g) provides an independent exception to immunity from attachment, based on an expansive reading of the text of the subsection as well as on legislative intent. The provision is "ambiguous," but the text, intent, and history show that it is "intended to enable judgment creditors to execute their judgments against all property of foreign state sponsors of terrorism." The circuit court's "narrow" construction of the provision "creates internal inconsistencies and impossibilities that render subsection 1610(g) all but meaningless" because

that construction "requires judgment creditors proceeding under subsection 1610(g) to additionally satisfy the strict commercial use requirements."

Petitioners contend that the Ninth Circuit's "expansive" construction is consistent with the intent and history of the statute and "provides a cleaner read of the statutory text." The lower court erred in deciding that an independent, expansive Section 1610(g) "would render superfluous other terrorism execution immunity exceptions contained in subsections (a)(7) and (b)(3)." Rather, Congress upheld those subsections to deal with cases not included within Section 1610(g), "either because the judgments were entered under the former terrorism exception to jurisdictional immunity, to which subsection 1610(g) does not apply, or because the judgments are otherwise not enforceable under subsection 1610(g)."

Petitioners assert that the phrase "as provided in this section" leads to "textual tension" under the interpretations advanced by both the Seventh and the Ninth Circuit. The Seventh Circuit's reading would limit judgment creditors under Section 1610(g) to property that meets the commercial use requirement. This restriction "itself creates the internal inconsistencies referred to above." The Ninth Circuit would apply Section 1610(g) to proceedings under Section 1610(f), an earlier terrorism exception to execution immunity. This interpretation is logical "because Congress designed those procedures to deal with terrorism cases and they provide assistance in executing upon blocked assets, both of which are relevant to execution of judgments under subsection 1610(g)."

Petitioners claim that the problem with the Ninth Circuit's interpretation "is that the reference to 'this section' should be a reference to subsection (f)." But this weakness in the Ninth Circuit's construction of the statute cannot be decisive "because due to the internal inconsistencies in the Seventh Circuit's reading, as applied, subsection 1610(g) would work only under very limited circumstances, and only in conjunction with subsection (a)(7)."

Petitioners submit that an alternative interpretation of the phrase "as provided in this section" suggests that "this section" refers to the 2008 NDAA itself, that is, to Section 1083 of the NDAA of 2008. This interpretation would give meaning to both "this section" and Section 1610(g) as a whole.

Finally, petitioners argue that the legislative intent and history combined with the inclusion of Section 1610(g) "within a comprehensive terrorism exception support the expansive construction of the execution immunity exception." Congress has declared "clearly and consistently" that it intends to provide "meaningful relief to victims of state sponsored terrorism." Concerns of "international comity" must be rejected when dealing with designated state sponsors of terrorism. But even if comity applied to Iran as a sovereign state, "Congress has the power to, and in fact did, legislate to place the interests of the terrorism victims and of our national interests above the interests of international comity."

Petitioners' position is supported by three amicus briefs:

1. Amicus the Foundation for Defense of Democracies (FDD) is a nonprofit, nonpartisan policy institute focusing on foreign policy and national security. Through its Iran Project and other initiatives, FDD conducts extensive research on state sponsorship of terrorism and efforts to combat such terrorism. FDD's research and analysis has been used by members of Congress to, among other things, develop legislation relating to the scope of Iran's sovereign immunity from attachment and execution to satisfy judgments based on that state's sponsorship of terrorism. FDD argues that "[t]he simplest and most natural reading of the text of § 1610(g) is that it applies, as written, to 'the property of a foreign state,' such as the artifacts at issue in this case." The lower court, FDD argues, erred in holding that Section 1610(g) does nothing more than abrogate the *Bancec* rule because such a construction would render part of the provision superfluous as the *Bancec* factors are irrelevant to the execution against the property of a state (as opposed to an instrumentality). The court below erroneously analyzed the phrase "as provided in this section" to refer only to substantive subsections and failed to engage in the "classic judicial task of reconciling many laws enacted over time, and getting them to 'make sense' in combination."

2. Amici Victims of Iranian Terrorism (Victims) are Michael and Linda Bennett, who hold a judgment against Iran for the terrorism-related murder of their daughter. They are respondents in the Ninth Circuit decision, which permitted the attachment of funds at Bank Melli, Iran's largest bank. The Victims assert that interpreting Section 1610(g) as an independent "exception to the sovereign immunity of assets of state sponsors of terrorism is most consistent with the statutory text, as well as Congress's manifest purpose to enlarge opportunities for victims of state-sponsored terrorism to access the funds of those terrorist states."

3. Amici Former U.S. Counterterrorism Officials, National Security Officials, and National Security Scholars (Former Officials) have "spent substantial portions of their careers developing, interpreting, and enforcing this country's framework of federal laws designed to prevent heinous acts of terrorism." Their "experience confirms that successfully starving terrorist organizations of funding is a sure way to save American lives." They assert that "private lawsuits must be an integral component of any effective strategy to keep money out of terrorists' hands." The Former Officials point out that foreign sovereigns like Iran are the source of much of the money that funds terror activities. The Former Officials argue that Section 1610(g) "cannot be understood in isolation, but must be interpreted as part of the larger legal antiterrorism framework in which it operates. This robust, comprehensive body of law evinces Congress's absolutist purpose to prevent rogue nations from sponsoring terror operations, utilizing every economic tool at its disposal, including administrative sanctions, civil and criminal penalties, and private lawsuits."

Respondent Iran argues that Section 1610(g) was enacted in order to allow "certain terrorism plaintiffs to execute against sovereign and instrumentality assets without regard to the customary presumption of separate status" recognized in the *Bancec* decision. But, in doing so, "Congress did not eliminate the rules of sovereign immunity for terrorism judgments altogether." Iran asserts that petitioners' interpretation is not supported by the legislative history. Rather, it "shows that Congress enacted § 1610(g) to eliminate *Bancec's* focus on domination and control as the standard for piercing the corporate veil, replacing it with a test of 'simple' and 'beneficial' ownership." Iran claims that "[t]here is no evidence that Congress also intended to abrogate the longstanding commercial activity requirement for overcoming execution immunity." Petitioners' interpretation of

Section 1610(g) instead represents "a dramatic departure from the traditional restrictive theory of immunity. It would put the United States in violation of international law." Iran demands that the Court "insists on a clear indication of Congress's intent before countenancing such a result." Finally, Iran points to the Executive Branch, which "has warned [that] expansive constructions of immunity exceptions threaten United States interests by encouraging reciprocal actions by foreign government."

Respondent University explains that "Iran long ago entrusted the Persepolis Collection, which dates from approximately 500 B.C.E., to the University for study and publication. The Collection is part of the cultural patrimony not just of Persia and Iran but of humankind. The University supports the claim of sovereign immunity in this case so that it may continue to carry out its core missions of research and teaching, and so that it may maintain ties to individuals and institutions in other nations who share the University's commitment to the advancement of human knowledge." The University asserts that, because Section 1610(g) "says nothing about sovereign immunity, [ ] it is implausible to suppose that Congress would have abrogated execution immunity in such a casual fashion in a provision dealing with an entirely different issue." The University contends that the phrase "as provided in this section" must refer to Section 1610, because a reference to Section 1610(f) or the NDAA are not plausible. This is consistent with the construction of the FSIA, which states in Section 1609 that property "shall be immune" and in Section 1610 that property "shall not be immune" (or that Section 1609 "shall not apply"). Section 1610(g), on the other hand, "contains no such language." Finally, the University submits that "especially in connection with execution immunity—the more sensitive aspect of foreign sovereign immunity—the distinction between commercial activity and property, on the one hand, and noncommercial activity and property, on the other, is foundational. That distinction is emphasized in the FSIA itself; in this Court's decisions; in the State Department's statements; in the United Nations convention on the subject; and in a decision of the International Court of Justice. Congress, of course, has the power to override that distinction, but the Court should not assume that Congress has done so unless there is clear evidence that Congress did. Here the opposite is true; the evidence is overwhelming that Congress intended no such abrogation of sovereign immunity."

Respondent Museum advised the Court that "it has no interest in the outcome of [the] proceedings" and, thus, waived the filing of a brief on the merits.

As of this writing, the United States has not submitted a brief in response to petitioners' September 2017 merits brief. Nonetheless, in May 2017, in response to the Court's order inviting the Acting Solicitor General to express the views of the United States on the question whether *certiorari* should be granted, the United States submitted an amicus brief, arguing that the petition should be granted, but only as to the interpretation of Section 1610(g). In that brief, the United States asserted that Section 1610(g) does not provide a freestanding exception, reasoning: "The Ninth Circuit's decision in *Bennett* is wrong, for essentially the reasons stated in the Seventh Circuit's decision below, and the proper resolution of this question is important. Although the United States sympathizes with petitioners and other victims of terrorism, the seizure of a foreign sovereign's property via attachment or execution can affect the United States' foreign relations. The United States therefore has a strong interest in the proper interpretation and application of the FSIA's rules governing judicial seizure of foreign state property in the United States."

SIGNIFICANCE

The Court is called on to decipher the meaning of a discreet subsection amid a patchwork of statutes that have been amended and supplemented over decades. This task will certainly include a thoughtful exploration of the intricacies of textual analysis. But the Court may also have to balance significant interests of important stakeholders.

If the Court finds that Section 1610(g) is a freestanding exception to executional immunity, priceless artifacts like the Persepolis Collection can be attached and sold to the highest bidder, thus significantly affecting scholarship in history, art, and other worthy disciplines. Also, the Executive Branch may face difficulties managing foreign relations and protecting U.S. interests, because "enlarging the category of property available for…execution in the United States invites similar treatment by other countries where our assets may be located."

If, on the other hand, the Court determines that Section 1610(g) does not provide an independent immunity exception, the ability of terrorism victims to obtain private redress will be significantly frustrated, and public efforts to curtail terrorism funding may be hindered. As Amici Former Officials pointed out, "While 'terrorists seldom kill for money,…they always need money to kill.'"

Birgit Kurtz is a director in the New York office of Gibbons P.C., focusing on international commercial dispute resolution and art law. She can be reached at BKurtz@gibbonslaw.com or 212.613.2009.

PREVIEW of United States Supreme Court Cases, pages 75–79.

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AMICUS BRIEFS

In Support of Petitioners Rubin, et al.

Foundation for Defense of Democracies (Kent A. Yalowitz, 212.836.8000)

Victims of Iranian Terrorism (Matthew D. McGill, 202.887.3680)

Former U.S. Counterterrorism Officials, et al. (J. Carl Cecere, 469.600.9455)