Published on *The National Law Review* https://natlawreview.com

Today's Argument Was More Consequential Than Issued Opinions - SCOTUS Today

Article By:

Stuart M. Gerson

The Supreme Court heard arguments this morning in the case of Joseph Fischer, one of more than 300 people convicted of corruptly obstructing an official proceeding: the congressional certification on January 6, 2021, of Joe Biden's victory over Donald Trump.

If oral argument is any indication, there is considerable division between the jurisprudential liberals and conservatives concerning the breadth and effect of the obstruction statute. The *Fischer* case is important because of its potential effects on the numerous convictions entered in the District Court for D.C. and because Special Counsel Jack Smith has charged Trump with the same offense in his pending case.

Of less national significance are the two decisions issued by the Court today.

Rudisill v. McDonough concerned an Army veteran who was a three-time enlistee. His initial enlistment entitled him to 36 months of educational benefits under the Montgomery GI Bill ("Montgomery benefits"). His subsequent service entitled him to 36 months of educational benefits under the Post-9/11 GI Bill ("Post 9/11 benefits"). Both entitlements were subject to a 48-month aggregate benefits cap. Rudisill used 25 months and 14 days of his Montgomery benefits to pay for his undergraduate education. After serving his third tour of duty, Rudisill sought to use his Post-9/11 benefits to attend divinity school. The Department of Veterans Affairs (VA) informed him that his Post-9/11 benefits were limited to the duration of his unused Montgomery benefits, pursuant to a provision of the Post-9/11 GI Bill, 38 U. S. C. §3327(d)(2).

The VA claimed that, by requesting Post-9/11 benefits before exhausting all of his Montgomery benefits, Rudisill could receive only 36 months of benefits in total, not the 48 months to which he would otherwise be entitled. The question before the Court was whether Rudisill could access his Post-9/11 benefits entitlement without being subject to §3327(d)(2)'s durational limit. A 7–2 majority, in an opinion written by Justice Jackson, held that he can. The Court echoed Justice Kagan's previous comment in another case that "We're all textualists now," holding that because Rudisill simply seeks to use one of two separate entitlements, §3327(d)(2) does not apply. Although Justices Thomas and Alito disagreed, a substantial majority of both liberals and conservatives saw the statutory texts as demanding a focus on the two separate benefits entitlements themselves—rather than on his periods of service.

It was only last week that I wrote about the Court's unanimous decision in *Sheetz v. County of El Dorado, California*, in which a property owner prevailed in a Fifth Amendment Takings Clause case involving the issuance of building permits. Today, more than 120 property owners were also the beneficiaries of another unanimous Supreme Court opinion in a Takings Clause case. In *DeVillier v. Texas*, the named petitioner and a host of others who were plaintiffs in Texas state court alleged that by building a median barrier and using private property to store stormwater, Texas had effected a taking for which the State had to pay just compensation. The U.S. Court of Appeals for the Fifth Circuit had ruled "that the Fifth Amendment Takings Clause as applied to the states through the Fourteenth Amendment does not provide a right of action for takings claims against a state." 53 F. 4th 904 (*per curiam*). Per Justice Thomas, the Court delivered a unanimous opinion reversing the Fifth Circuit, noting the Takings Clause violation is self-executing, *i.e.,* it affords a property owner an irrevocable right to just compensation immediately upon a taking. The Court also noted that Texas law provides for an inverse-condemnation cause of action, under which a property owner can seek just compensation from the State, both under the Texas Constitution and the Takings Clause. Thus, the case is not one where a property owner has no cause of action to seek just compensation, and the Court did not have to decide the broad question of whether such an action could be pursued under the Takings Clause itself if there were no independent statute providing a cause of action. In any event, *DeVillier* demonstrates an energetic view of individual property rights across both jurisprudential wings of the Court.

National Law Review, Volume XIV, Number 107