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SUPREME COURT OF THE UNITED STATES

Syllabus

**ARKANSAS GAME AND FISH COMMISSION *v.*
UNITED STATES****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT**

No. 11–597. Argued October 3, 2012—Decided December 4, 2012

Petitioner, Arkansas Game and Fish Commission (Commission), owns and manages the Dave Donaldson Black River Wildlife Management Area (Management Area or Area), which comprises 23,000 acres along the Black River that are forested with multiple hardwood oak species and serve as a venue for recreation and hunting. In 1948, the U. S. Army Corps of Engineers (Corps) constructed the Clearwater Dam (Dam) upstream from the Management Area and adopted a plan known as the Water Control Manual (Manual), which sets seasonally varying rates for the release of water from the Dam. Periodically from 1993 until 2000, the Corps, at the request of farmers, authorized deviations from the Manual that extended flooding into the Management Area’s peak timber growing season. The Commission objected to the deviations on the ground that they adversely impacted the Management Area, and opposed the Corps’ proposal to make the temporary deviations part of the Manual’s permanent water-release plan. After testing the effect of the deviations, the Corps abandoned the proposed Manual revision and ceased its temporary deviations.

The Commission sued the United States, alleging that the temporary deviations constituted a taking of property that entitled the Commission to compensation. The Commission maintained that the deviations caused sustained flooding during tree-growing season, and that the cumulative impact of the flooding caused the destruction of timber in the Area and a substantial change in the character of the terrain, necessitating costly reclamation measures. The Court of Federal Claims’ judgment in favor of the Commission was reversed by the Federal Circuit. The Court of Appeals acknowledged that temporary government action may give rise to a takings claim if

United States Court of Appeals for the Federal Circuit

**PETER H. BEER, TERRY J. HATTER, JR.,
RICHARD A. PAEZ, LAURENCE H. SILBERMAN,
A. WALLACE TASHIMA AND U. W. CLEMON,**
Plaintiffs-Appellants,

v.

UNITED STATES,
Defendant-Appellee.

2010-5012

Appeal from the United States Court of Federal
Claims in No. 09-CV-037, Senior Judge Robert H. Hodges,
Jr.

Decided: October 5, 2012

CHRISTOPHER LANDAU, Kirkland & Ellis, LLP, of
Washington, DC, argued for plaintiffs-appellants. With
him on the brief were JOHN C. O'QUINN and K. WINN
ALLEN.

BRIAN M. SIMKIN, Assistant Director, Commercial
Litigation Branch, Civil Division, United States Depart-
ment of Justice, of Washington, DC, argued for defendant-
appellee. With him on the brief were STUART F. DELERY,

SCALIA, J., dissenting

SUPREME COURT OF THE UNITED STATES

PETER H. BEER ET AL. *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 09–1395. Decided June 28, 2011

The petition for writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Federal Circuit for consideration of the question of preclusion raised by the Acting Solicitor General in his brief for the United States filed July 26, 2010. The Court considers it important that there be a decision on the question, rather than that an answer be deemed unnecessary in light of prior precedent on the merits. Further proceedings after decision of the preclusion question are for the Court of Appeals to determine in the first instance. JUSTICE BREYER would grant the petition for writ of certiorari and set the case for argument.

JUSTICE SCALIA, dissenting.

It has been my consistent view, not always shared by the Court, that “we have no power to set aside the duly recorded judgments of lower courts unless we find them to be in error, or unless they are cast in doubt by a factor arising after they were rendered.” *Webster v. Cooper*, 558 U. S. ___, ___ (2009) (SCALIA, J., dissenting) (slip op., at 3). Today’s vacatur resembles that in *Youngblood v. West Virginia*, 547 U. S. 867 (2006) (*per curiam*), from which I dissented, *id.*, at 870. I would grant the petition and set the case for argument.

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SUPREME COURT OF THE UNITED STATES

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BOWMAN v. MONSANTO CO. ET AL.**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT**

No. 11–796. Argued February 19, 2013—Decided May 13, 2013

Respondent Monsanto invented and patented Roundup Ready soybean seeds, which contain a genetic alteration that allows them to survive exposure to the herbicide glyphosate. It sells the seeds subject to a licensing agreement that permits farmers to plant the purchased seed in one, and only one, growing season. Growers may consume or sell the resulting crops, but may not save any of the harvested soybeans for replanting. Petitioner Bowman purchased Roundup Ready soybean seed for his first crop of each growing season from a company associated with Monsanto and followed the terms of the licensing agreement. But to reduce costs for his riskier late-season planting, Bowman purchased soybeans intended for consumption from a grain elevator; planted them; treated the plants with glyphosate, killing all plants without the Roundup Ready trait; harvested the resulting soybeans that contained that trait; and saved some of these harvested seeds to use in his late-season planting the next season. After discovering this practice, Monsanto sued Bowman for patent infringement. Bowman raised the defense of patent exhaustion, which gives the purchaser of a patented article, or any subsequent owner, the right to use or resell that article. The District Court rejected Bowman’s defense and the Federal Circuit affirmed.

Held: Patent exhaustion does not permit a farmer to reproduce patented seeds through planting and harvesting without the patent holder’s permission. Pp. 4–10.

(a) Under the patent exhaustion doctrine, “the initial authorized sale of a patented article terminates all patent rights to that item,” *Quanta Computer, Inc. v. LG Electronics, Inc.*, 553 U. S. 617, 625, and confers on the purchaser, or any subsequent owner, “the right to use [or] sell” the thing as he sees fit, *United States v. Univis Lens Co.*,

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SUPREME COURT OF THE UNITED STATES

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SEBELIUS, SECRETARY OF HEALTH AND HUMAN SERVICES v. CLOER**CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

No. 12–236. Argued March 19, 2013—Decided May 20, 2013

The National Childhood Vaccine Injury Act of 1986 (NCVIA or Act) established a no-fault compensation system to stabilize the vaccine market and expedite compensation to injured parties. *Bruesewitz v. Wyeth LLC*, 562 U. S. ___, ___–___. Under the Act, “[a] proceeding for compensation” is “initiated” by “service upon the Secretary” of Health and Human Services and “the filing of a petition containing” specified documentation with the clerk of the Court of Federal Claims, who then “immediately” forwards the petition for assignment to a special master. 42 U. S. C. §300aa–11(a)(1). An attorney may not charge a fee for “services in connection with [such] a petition,” §300aa–15(e)(3), but a court may award attorney’s fees and costs “incurred [by a claimant] in any proceeding on” an unsuccessful “petition filed under section 300aa–11,” if that petition “was brought in good faith and there was a reasonable basis for the claim for which the petition was brought,” §300aa–15(e)(1).

In 1997, shortly after receiving her third Hepatitis-B vaccine, respondent Cloer began to experience symptoms that eventually led to a multiple sclerosis (MS) diagnosis in 2003. In 2004, she learned of a link between MS and the Hepatitis-B vaccine, and in 2005, she filed a claim for compensation under the NCVIA, alleging that the vaccine caused or exacerbated her MS. After reviewing the petition and its supporting documentation, the Chief Special Master concluded that Cloer’s claim was untimely because the Act’s 36-month limitations period began to run when she had her first MS symptoms in 1997. The Federal Circuit ultimately agreed that Cloer’s petition was untimely. Cloer then sought attorney’s fees and costs (collectively, fees). The en banc Federal Circuit found that she was entitled to recover

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SUPREME COURT OF THE UNITED STATES

Syllabus

FEDERAL TRADE COMMISSION *v.* ACTAVIS, INC.,
ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

No. 12–416. Argued March 25, 2013—Decided June 17, 2013

The Drug Price Competition and Patent Term Restoration Act of 1984 (Hatch-Waxman Act or Act) creates special procedures for identifying and resolving patent disputes between brand-name and generic drug manufacturers, one of which requires a prospective generic manufacturer to assure the Food and Drug Administration (FDA) that it will not infringe the brand-name’s patents. One way to provide such assurance (the “paragraph IV” route) is by certifying that any listed, relevant patent “is invalid or will not be infringed by the manufacture, use, or sale” of the generic drug. 21 U. S. C. §355(j)(2)(A)(vii)(IV).

Respondent Solvay Pharmaceuticals obtained a patent for its approved brand-name drug AndroGel. Subsequently, respondents Actavis and Paddock filed applications for generic drugs modeled after AndroGel and certified under paragraph IV that Solvay’s patent was invalid and that their drugs did not infringe it. Solvay sued Actavis and Paddock, claiming patent infringement. See 35 U. S. C. §271(e)(2)(A). The FDA eventually approved Actavis’ generic product, but instead of bringing its drug to market, Actavis entered into a “reverse payment” settlement agreement with Solvay, agreeing not to bring its generic to market for a specified number of years and agreeing to promote AndroGel to doctors in exchange for millions of dollars. Paddock made a similar agreement with Solvay, as did respondent Par, another manufacturer aligned in the patent litigation with Paddock.

The Federal Trade Commission (FTC) filed suit, alleging that respondents violated §5 of the Federal Trade Commission Act by unlawfully agreeing to abandon their patent challenges, to refrain from

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SUPREME COURT OF THE UNITED STATES

Syllabus

GUNN ET AL. *v.* MINTON

CERTIORARI TO THE SUPREME COURT OF TEXAS

No. 11–1118. Argued January 16, 2013—Decided February 20, 2013

Petitioner attorneys represented respondent Minton in a federal patent infringement suit. The District Court declared Minton’s patent invalid under the “on sale” bar since he had leased his interactive securities trading system to a securities brokerage “more than one year prior to the date of the [patent] application.” 35 U. S. C. §102(b). In a motion for reconsideration, Minton argued for the first time that the lease was part of ongoing testing, and therefore fell within the “experimental use” exception to the on-sale bar. The District Court denied the motion and the Federal Circuit affirmed, concluding that the District Court had appropriately held that argument waived. Convinced that his attorneys’ failure to timely raise the argument cost him the lawsuit and led to the invalidation of his patent, Minton brought a legal malpractice action in Texas state court. His former attorneys argued that Minton’s infringement claims would have failed even if the experimental-use argument had been timely raised, and the trial court agreed. On appeal, Minton claimed that the federal district courts had exclusive jurisdiction over claims like his under 28 U. S. C. §1338(a), which provides for exclusive federal jurisdiction over any case “arising under any Act of Congress relating to patents.” Minton argued that the state trial court had therefore lacked jurisdiction, and he should be able to start over with his malpractice suit in federal court. Applying the test of *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 545 U. S. 308, the Texas Court of Appeals rejected Minton’s argument, proceeded to the merits, and determined that Minton had failed to establish experimental use. The Texas Supreme Court reversed, concluding that the case properly belonged in federal court because the success of Minton’s malpractice claim relied upon a question of federal patent law.

Held: Section §1338(a) does not deprive the state courts of subject mat-

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SUPREME COURT OF THE UNITED STATES

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HOLLINGSWORTH ET AL. *v.* PERRY ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 12–144. Argued March 26, 2013—Decided June 26, 2013

After the California Supreme Court held that limiting marriage to opposite-sex couples violated the California Constitution, state voters passed a ballot initiative known as Proposition 8, amending the State Constitution to define marriage as a union between a man and a woman. Respondents, same-sex couples who wish to marry, filed suit in federal court, challenging Proposition 8 under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and naming as defendants California’s Governor and other state and local officials responsible for enforcing California’s marriage laws. The officials refused to defend the law, so the District Court allowed petitioners—the initiative’s official proponents—to intervene to defend it. After a bench trial, the court declared Proposition 8 unconstitutional and enjoined the public officials named as defendants from enforcing the law. Those officials elected not to appeal, but petitioners did. The Ninth Circuit certified a question to the California Supreme Court: whether official proponents of a ballot initiative have authority to assert the State’s interest in defending the constitutionality of the initiative when public officials refuse to do so. After the California Supreme Court answered in the affirmative, the Ninth Circuit concluded that petitioners had standing under federal law to defend Proposition 8’s constitutionality. On the merits, the court affirmed the District Court’s order.

Held: Petitioners did not have standing to appeal the District Court’s order. Pp. 5–17.

(a) Article III of the Constitution confines the judicial power of federal courts to deciding actual “Cases” or “Controversies.” §2. One essential aspect of this requirement is that any person invoking the power of a federal court must demonstrate standing to do so. In oth-

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SUPREME COURT OF THE UNITED STATES

Syllabus

HORNE ET AL. *v.* DEPARTMENT OF AGRICULTURECERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 12–123. Argued March 20, 2013—Decided June 10, 2013

The Agricultural Marketing Agreement Act of 1937 (AMAA), which was enacted to stabilize prices for agricultural commodities, regulates only “handlers,” *i.e.*, “processors, associations of producers, and others engaged in the handling” of covered agricultural commodities, 7 U. S. C. §608c(1). Any handler that violates the Secretary of Agriculture’s marketing orders may be subject to civil and criminal penalties. §§608a(5), 608a(6), and 608c(14). One such order, the California Raisin Marketing Order (Marketing Order or Order), established a Raisin Administrative Committee (RAC), which recommends setting up annual reserve pools of raisins that are not to be sold on the open domestic market, and which recommends what portion of a particular year’s production should be included in the pool. The Order also requires handlers to pay assessments to help cover the RAC’s administrative costs.

Petitioners, California raisin growers, started a business that processed more than 3 million pounds of raisins from their farm and 60 other farms during the two crop years. When they refused to surrender the requisite portions of raisins to the reserve, the United States Department of Agriculture (USDA) began administrative proceedings, alleging that petitioners were handlers who were required to retain raisins in reserve and pay assessments. Petitioners countered that as producers, they were not subject to the Order. They also raised an affirmative defense that the Order violated the Fifth Amendment’s prohibition against taking property without just compensation. An Administrative Law Judge found that petitioners were handlers, found that they had violated the AMAA and the Marketing Order, and rejected their takings defense. On appeal, a judicial officer agreed that petitioners were handlers who had violated the

In the United States Court of Federal Claims

No. 12-175C
(Filed: August 30, 2013)

_____)	
)	
JOHNATHAN DANIEL KING, et al.,)	Fair Labor Standards Act (“FLSA”),
)	29 U.S.C. § 216(b); Motion to Transfer
Plaintiffs,)	Denied; Court of Federal Claims may
)	hear FLSA cases after Supreme
v.)	Court’s decision in <u>United States v.</u>
)	<u>Bornes</u> , 133 S. Ct. 12 (2012)
THE UNITED STATES,)	
)	
Defendant.)	
_____)	

Raymond C. Fay, Washington, DC, for plaintiffs. *Heidi Burakiewicz* and *Karla Gilbride*, of counsel.

Daniel B. Volk, Civil Division, United States Department of Justice, Washington, DC, with whom were *Stuart F. Delery*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Steven J. Gillingham*, Assistant Director, for defendant. *Kurt Lauer*, United States Customs and Border Protection, of counsel.

OPINION AND ORDER DENYING MOTION TO TRANSFER

FIRESTONE, *Judge*.

In this collective action case, 228 Supervisory Border Patrol Agents, who served as instructors at Border Patrol Academies in Artesia, New Mexico, Harpers Ferry, West Virginia, or El Paso, Texas, allege that the United States Customs and Border Protection failed to pay overtime compensation due to them under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 et seq. (2012), in the years preceding January 2012. On July 30, 2013, the government filed a motion to transfer this case to the United States District

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SUPREME COURT OF THE UNITED STATES

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**KIRTSAENG, DBA BLUECHRISTINE99 v. JOHN WILEY
& SONS, INC.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT**

No. 11–697. Argued October 29, 2012—Decided March 19, 2013

The “exclusive rights” that a copyright owner has “to distribute copies . . . of [a] copyrighted work,” 17 U. S. C. §106(3), are qualified by the application of several limitations set out in §§107 through 122, including the “first sale” doctrine, which provides that “the owner of a particular copy or phonorecord lawfully made under this title . . . is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord,” §109(a). Importing a copy made abroad without the copyright owner’s permission is an infringement of §106(3). See §602(a)(1). In *Quality King Distributors, Inc. v. Lanza Research Int’l, Inc.*, 523 U. S. 135, 145, this Court held that §602(a)(1)’s reference to §106(3) incorporates the §§107 through 122 limitations, including §109’s “first sale” doctrine. However, the copy in *Quality King* was initially manufactured in the United States and then sent abroad and sold.

Respondent, John Wiley & Sons, Inc., an academic textbook publisher, often assigns to its wholly owned foreign subsidiary (Wiley Asia) rights to publish, print, and sell foreign editions of Wiley’s English language textbooks abroad. Wiley Asia’s books state that they are not to be taken (without permission) into the United States. When petitioner Kirtsaeng moved from Thailand to the United States to study mathematics, he asked friends and family to buy foreign edition English-language textbooks in Thai book shops, where they sold at low prices, and to mail them to him in the United States. He then sold the books, reimbursed his family and friends, and kept the profit.

Wiley filed suit, claiming that Kirtsaeng’s unauthorized importation and resale of its books was an infringement of Wiley’s §106(3)

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SUPREME COURT OF THE UNITED STATES

Syllabus

KOONTZ v. ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 11–1447. Argued January 15, 2013—Decided June 25, 2013

Coy Koontz, Sr., whose estate is represented here by petitioner, sought permits to develop a section of his property from respondent St. Johns River Water Management District (District), which, consistent with Florida law, requires permit applicants wishing to build on wetlands to offset the resulting environmental damage. Koontz offered to mitigate the environmental effects of his development proposal by deeding to the District a conservation easement on nearly three-quarters of his property. The District rejected Koontz’s proposal and informed him that it would approve construction only if he (1) reduced the size of his development and, *inter alia*, deeded to the District a conservation easement on the resulting larger remainder of his property or (2) hired contractors to make improvements to District-owned wetlands several miles away. Believing the District’s demands to be excessive in light of the environmental effects his proposal would have caused, Koontz filed suit under a state law that provides money damages for agency action that is an “unreasonable exercise of the state’s police power constituting a taking without just compensation.”

The trial court found the District’s actions unlawful because they failed the requirements of *Nollan v. California Coastal Comm’n*, 483 U. S. 825, and *Dolan v. City of Tigard*, 512 U. S. 374. Those cases held that the government may not condition the approval of a land-use permit on the owner’s relinquishment of a portion of his property unless there is a nexus and rough proportionality between the government’s demand and the effects of the proposed land use. The District Court of Appeal affirmed, but the State Supreme Court reversed on two grounds. First, it held that petitioner’s claim failed because, unlike in *Nollan* or *Dolan*, the District *denied* the application. Se-

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SUPREME COURT OF THE UNITED STATES

Syllabus

ASSOCIATION FOR MOLECULAR PATHOLOGY ET AL.
v. MYRIAD GENETICS, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

No. 12–398. Argued April 15, 2013—Decided June 13, 2013

Each human gene is encoded as deoxyribonucleic acid (DNA), which takes the shape of a “double helix.” Each “cross-bar” in that helix consists of two chemically joined nucleotides. Sequences of DNA nucleotides contain the information necessary to create strings of amino acids used to build proteins in the body. The nucleotides that code for amino acids are “exons,” and those that do not are “introns.” Scientists can extract DNA from cells to isolate specific segments for study. They can also synthetically create exons-only strands of nucleotides known as complementary DNA (cDNA). cDNA contains only the exons that occur in DNA, omitting the intervening introns.

Respondent Myriad Genetics, Inc. (Myriad), obtained several patents after discovering the precise location and sequence of the BRCA1 and BRCA2 genes, mutations of which can dramatically increase the risk of breast and ovarian cancer. This knowledge allowed Myriad to determine the genes’ typical nucleotide sequence, which, in turn, enabled it to develop medical tests useful for detecting mutations in these genes in a particular patient to assess the patient’s cancer risk. If valid, Myriad’s patents would give it the exclusive right to isolate an individual’s BRCA1 and BRCA2 genes, and would give Myriad the exclusive right to synthetically create BRCA cDNA. Petitioners filed suit, seeking a declaration that Myriad’s patents are invalid under 35 U. S. C. §101. As relevant here, the District Court granted summary judgment to petitioners, concluding that Myriad’s claims were invalid because they covered products of nature. The Federal Circuit initially reversed, but on remand in light of *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U. S. ___, the Circuit found both isolated DNA and cDNA patent eligible.

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SUPREME COURT OF THE UNITED STATES

Syllabus

**PPL CORP. ET AL. v. COMMISSIONER OF INTERNAL
REVENUE****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT**

No. 12–43. Argued February 20, 2013—Decided May 20, 2013

In 1997, the United Kingdom (U. K.), newly under Labour Party rule, imposed a one-time “windfall tax” on 32 U. K. companies privatized between 1984 and 1996 by the Conservative government. The companies had been sold to private parties through an initial sale of shares, known as a “flotation.” Some of the companies were required to continue providing services for a fixed period at the same rates they had offered under government control. Many of those companies became dramatically more efficient and earned substantial profits in the process.

Petitioner PPL Corporation (PPL), part owner of a privatized U. K. company subject to the windfall tax, claimed a credit for its share of the bill in its 1997 federal income-tax return, relying on Internal Revenue Code §901(b)(1), which states that any “income, war profits, and excess profits taxes” paid overseas are creditable against U. S. income taxes. Treasury Regulation §1.901–2(a)(1) interprets this section to mean that a foreign tax is creditable if its “predominant character” “is that of an income tax in the U. S. sense.” The Commissioner of Internal Revenue (Commissioner) rejected PPL’s claim, but the Tax Court held that the U. K. windfall tax was creditable for U. S. tax purposes under §901. The Third Circuit reversed.

Held: The U. K. tax is creditable under §901. Pp. 4–14.

(a) Treasury Regulation §1.901–2, which codifies longstanding doctrine dating back to *Biddle v. Commissioner*, 302 U. S. 573, 578–579 (1938), provides the relevant legal standard. First, a tax’s “predominant character,” or the normal manner in which a tax applies, is controlling. See *id.*, at 579. Thus, a foreign tax that operates as an income, war profits, or excess profits tax for most taxpayers is generally

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SUPREME COURT OF THE UNITED STATES

Syllabus

**SHELBY COUNTY, ALABAMA v. HOLDER, ATTORNEY
GENERAL, ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT**

No. 12–96. Argued February 27, 2013—Decided June 25, 2013

The Voting Rights Act of 1965 was enacted to address entrenched racial discrimination in voting, “an insidious and pervasive evil which had been perpetuated in certain parts of our country through unremitting and ingenious defiance of the Constitution.” *South Carolina v. Katzenbach*, 383 U. S. 301, 309. Section 2 of the Act, which bans any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen . . . to vote on account of race or color,” 42 U. S. C. §1973(a), applies nationwide, is permanent, and is not at issue in this case. Other sections apply only to some parts of the country. Section 4 of the Act provides the “coverage formula,” defining the “covered jurisdictions” as States or political subdivisions that maintained tests or devices as prerequisites to voting, and had low voter registration or turnout, in the 1960s and early 1970s. §1973b(b). In those covered jurisdictions, §5 of the Act provides that no change in voting procedures can take effect until approved by specified federal authorities in Washington, D. C. §1973c(a). Such approval is known as “preclearance.”

The coverage formula and preclearance requirement were initially set to expire after five years, but the Act has been reauthorized several times. In 2006, the Act was reauthorized for an additional 25 years, but the coverage formula was not changed. Coverage still turned on whether a jurisdiction had a voting test in the 1960s or 1970s, and had low voter registration or turnout at that time. Shortly after the 2006 reauthorization, a Texas utility district sought to bail out from the Act’s coverage and, in the alternative, challenged the Act’s constitutionality. This Court resolved the challenge on statutory grounds, but expressed serious doubts about the Act’s con-

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SUPREME COURT OF THE UNITED STATES

Syllabus

**UNITED STATES *v.* WINDSOR, EXECUTOR OF THE
ESTATE OF SPYER, ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SECOND CIRCUIT**

No. 12–307. Argued March 27, 2013—Decided June 26, 2013

The State of New York recognizes the marriage of New York residents Edith Windsor and Thea Spyer, who wed in Ontario, Canada, in 2007. When Spyer died in 2009, she left her entire estate to Windsor. Windsor sought to claim the federal estate tax exemption for surviving spouses, but was barred from doing so by §3 of the federal Defense of Marriage Act (DOMA), which amended the Dictionary Act—a law providing rules of construction for over 1,000 federal laws and the whole realm of federal regulations—to define “marriage” and “spouse” as excluding same-sex partners. Windsor paid \$363,053 in estate taxes and sought a refund, which the Internal Revenue Service denied. Windsor brought this refund suit, contending that DOMA violates the principles of equal protection incorporated in the Fifth Amendment. While the suit was pending, the Attorney General notified the Speaker of the House of Representatives that the Department of Justice would no longer defend §3’s constitutionality. In response, the Bipartisan Legal Advisory Group (BLAG) of the House of Representatives voted to intervene in the litigation to defend §3’s constitutionality. The District Court permitted the intervention. On the merits, the court ruled against the United States, finding §3 unconstitutional and ordering the Treasury to refund Windsor’s tax with interest. The Second Circuit affirmed. The United States has not complied with the judgment.

Held:

1. This Court has jurisdiction to consider the merits of the case. This case clearly presented a concrete disagreement between opposing parties that was suitable for judicial resolution in the District Court, but the Executive’s decision not to defend §3’s constitutionality