

16-1017 COX V. UNITED STATES

DECISION BELOW: Pet App.

LOWER COURT CASE NUMBER: 16-0635/AR

QUESTION PRESENTED:

Since shortly after the Civil War, federal law has required express authorization from Congress before active-duty military officers may hold a "civil office," including positions that require "an appointment by the President by and with the advice and consent of the Senate." 10 U.S.C. § 973(b)(2)(A)(ii).

After President Obama nominated and the Senate confirmed Lieutenant Colonel Paulette Vance Burton, Colonel Larss G. Celtnieks, Colonel James Wilson Herring, Jr., and Colonel Martin T. Mitchell as judges of the Article I U.S. Court of Military Commission Review (CMCR), all four continued to serve on either the Army or Air Force Court of Criminal Appeals (CCA). The U.S. Court of Appeals for the Armed Forces (CAAF) rejected as moot Petitioners' challenges to these judges' continued service on the CCAs, because the President had not signed the judges' CMCR commissions until after the CCAs had decided the Petitioners' cases on the merits.

The Questions Presented are:

1. Whether the Court of Appeals erred in holding that Petitioners' claims were moot.
2. Whether these judges' service on the CMCR disqualified them from continuing to serve on the CCAs under 10 U.S.C. § 973(b)(2)(A)(ii).
3. Whether the judges' simultaneous service on both the CMCR and the AFCCA violated the Appointments Clause.

CONSOLIDATED WITH 16-961 AND 16-1423 FOR ONE HOUR ORAL ARGUMENT. IN ADDITION TO THE QUESTIONS PRESENTED BY THE PETITIONS, THE PARTIES ARE DIRECTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION: WHETHER THIS COURT HAS JURISDICTION TO REVIEW THE CASES IN NOS. 16-961 AND 16-1017 UNDER 28 U. S. C. § 1259(3).

DALMAZZI v. UNITED STATES, 16-961 AND COX v. UNITED STATES, 16-1017
DISMISSED AS IMPROVIDENTLY GRANTED.

CERT. GRANTED 9/28/2017